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IN THE
Supreme Court of the United States

THE JUDICIAL COUNCIL FOR THE SUPERIOR COURT OF GUAM,
Petitioner, and

GOVERNOR CARL T.C. GUTIERREZ,
Real Party at Interest

vs.

SENATOR VICENTE C. PANGELINAN,
Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. **Did Senator Pangelinan Lack Taxpayer Standing Because He Utilized Public Funds To Pay For a Private Right Of Action?**

2. **Did the Ninth Circuit Abuse Its Discretion When It Denied The Judicial Council's Motion To Intervene In This Matter?**

3. **Was Bill 495 (a.k.a. "P.L. 24-139") In Fact Pocket Vetoed?**

4. **Whether Governor Gutierrez And The Judicial Council Were Denied Due Process When Certain Guam Supreme Court Justices Failed To Recuse Themselves After Having Formed A Negative Opinion About Bill 495 Prior To Hearing Whether Bill 495 Was Valid**

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GOVERNOR CARL T.C. GUTIERREZ,
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vs.

SENATOR VICENTE C. PANGELINAN,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The JUDICIAL COUNCIL FOR THE SUPERIOR COURT OF GUAM, Petitioners, requests that this Court issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

1. Pangelinan et al v. Gutierrez, SP 00073-98 (Super. Ct. Guam Jun 1, 1999).
2. Pangelinan v. Gutierrez, 2000 Guam 11 (Mar. 10, 2000).
3. Pangelinan v. Gutierrez, 276 F.3d 539 (9th Cir. 2002).

JURISDICTIONAL STATEMENT

On March 8, 2002, the Ninth Circuit Court of Appeals docketed its Order denying the Judicial Council's

Motion To Intervene for the Purposes of Requesting a Rehearing En Banc and/or Conducting an Appeal. In that same Order, the Ninth Circuit also denied the Judicial Council's Motion to Extend Time for Filing a Petition for Rehearing and the Judicial Council's Motion to Stay Mandate Pending Appeal of the Merits and/or Appeal of a Denial of the Motion to Intervene. As such, The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

- Article 1, § 7, Cl. 2 of the US Constitution
- Section 1, 14th Amendment of the US Constitution
- 48 U.S.C. § 1423i
- 48 U.S.C. § 1424-2
- 2 Guam Code Annotated ("GCA") § 1118
- 5 G.C.A. § 7103
- 5 G.C.A. § 7115
- 7 G.C.A. § 3103
- 7 G.C.A. § 6105
- Ninth Circuit Rule 6-2
- Rule 24 of the Federal Rules of Civil Procedure
- Rule 35 of Guam's Rules of Appellate Procedure
- Rule 19 of Guam's Rules of Civil Procedure
- Rule XVI, § 16.08(ix) of the Standing Rules for the 24th Guam Legislature.
- Rule XVII, § 17.12.01(viii) of the Standing Rules for the 25th Guam Legislature
- Rule XVII, § 17.10.01(viii) of the Standing Rules for the 26th Guam Legislature.
- Rule XXIII, § 23.12, of the Standing Rules for the 25th Guam Legislature.
- Rule XXIII, § 23.12 of the Standing Rules for the 26th Guam Legislature.

STATEMENT OF CASE

On February 7, 1998, the Guam Legislature passed Bill 495 later designated as Public Law 24-139 (referred hereinafter as either "Bill 495" or "P.L. 24-139"). Bill 495 updated Guam's Solid Waste Management Plan and clarified certain administrative powers of the Superior Court relative to the Supreme Court.[1] *See* Pangelinan v. Gutierrez, 2001 Guam 11 at 1, n. 1. Senator Pangelinan sued the Governor of Guam in the Superior Court of Guam and argued that Bill 495 was "pocket vetoed" because the bill could not be received when the Guam Legislature was adjourned. Pangelinan v. Gutierrez, SP 0073-98 (Superior Ct. Guam, June 1, 1999) at 2. The Superior Court of Guam rejected the argument and held that under 2 Guam Code Annotated ("G.C.A.") § 1118(c) the terms "recess" and adjournment" were synonymous, and hence the Governor was not prevented from returning the bill – which he constructively did within the thirty day deadline under 48 U.S.C. § 1423i.

The Supreme Court reversed the decision of the Superior Court on two grounds. First, there was a lack of adequate procedures surrounding the delivery of gubernatorial messages to an agent of the Legislature during legislative absences. Pangelinan v. Gutierrez, 2000 Guam 11 (March. 10, 2000). Second, the Legislature by its adjournment prevented the Governor from returning Bill 495. Id. The Governor appealed.

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[1] Under P.L. 23-86, the precursor to P.L. 24-139, which removed the Supreme Court Justices from the Judicial Council, the Judicial Council was "attached to the judicial branch of the government of Guam for the purposes of administration" and consisted of "the Presiding Judge of the Superior Court, two (2) additional judges of the Superior Court ... the Chief Justice Justice of the Supreme Court, and the two full-time associate Justices of the Supreme Court."

On January 10, 2002, the Ninth Circuit filed its decision in Pangelinan v. Gutierrez, 276 F.3d 539 (9th Cir. 2002). The Ninth Circuit upheld the Guam Supreme Court's decision on the grounds that the Guam Legislature's failure to provide adequate return procedures for Bill 495 prevented its return thereby causing it to be pocket vetoed. The Ninth Circuit also held that the bill was not ratified by subsequent legislation and that Governor Gutierrez had standing to bring the matter before the Ninth Circuit.

The Judicial Council believes that the Guam Supreme Court's decision adversely affects it because it eliminates their positions on the Judicial Council and probably voided their official acts taken since 1998 since Bill 495 was declared "void ab initio." Pangelinan, 2000 Guam 11 at 14, ¶ 29. On April 7, 2000, the Judicial Council passed Judicial Council Resolution No. 03-2000 authorizing the its Staff Attorney to pursue the matter legally.

The Judicial Council filed a Motion to Intervene in the Guam Supreme Court. The Judicial Council then filed a Writ of Certiorari in the Ninth Circuit pursuant to Ninth Circuit Rule 6-2. Contained within the Writ were arguments that the denial of the Motion to Intervene in the Guam Supreme Court was improper.[2] Id. The Writ was denied by order of the Ninth Circuit on May 31, 2000. The Judicial Council filed a Writ of Certiorari because it was uncertain whether Governor Gutierrez was going to file a brief on appeal. *See* Appendix A, Petitioner's Amicus Brief in the Ninth Circuit. Members of the Judicial Council made repeated attempts to ascertain whether Gov. Gutierrez

[2] The Judicial Council also sought a rehearing en banc before the Guam Supreme Court and also moved for the recusal of Justices Cruz and Siguenza.

intended to file an appeal at all. Id. Indeed, Governor Gutierrez failed to file his appeal to the Ninth Circuit in a timely manner.

The Judicial Council has persisted in its efforts to intervene in order vindicate its rights on appeal, especially in light of the Governor's decision not to appeal to this Court.

REASONS FOR GRANTING WRIT

I. Senator Pangelinan Lacked Taxpayer Standing.

The Judicial Council is challenging Senator Pangelinan's standing at this stage because the Judicial Council, along with rest of Guam, first learned that Senator Pangelinan was expending public funds in this case only **after** oral arguments took place before the Ninth Circuit. This knowledge came in the form of an article published in the Guam Pacific Daily News on August 21, 2001 which stated that Senator Pangelinan had expended three thousand four hundred and sixty-three dollars and ninety cents ($3,463.90) of public funds to attend the Ninth Circuit oral arguments for Pangelinan v. Gutierrez. *See* Steve Limtiaco, *Brown, Unpingco top users of $32,270 in legislative travel bills*, Pacific Daily New, August 21, 2001, at 3.

On January 23, 2001, a Guam Sunshine Act request regarding the Senator's travel and legal expenditures proves that the Guam Legislature did indeed fund Senator Pangelinan's trip to Hawai'i for the purpose of attending the "9th Circuit Court Hearing." Appendix at 108a. The Sunshine Act request also reveals that while this case was being litigated, Senator Pangelinan paid attorney Michael F.

Phillips at least twenty thousand dollars ($20,000.00) in public funds to litigate the issue.[3] Appendix at 112a – 118a.

Standing is jurisdictional and may be raised at any time. *See* FW/PBS, Inc. v. Dalas, 493 U.S. 215, 231, 110 S. Ct. 596, 608, 107 L. Ed.2d 603 (1990) (even if the parties fail to raise the issue, federal courts are under an independent obligation to examine their own jurisdiction since standing is perhaps the most important of the jurisdictional doctrines) (citations omitted); National Coal Ass'n v. Lujan, 979 F.2d 1548, 1551 & n. 3 (D.C. Cir. 1992) (questions implicating the court's Article III authority, including standing, may be raised at any time); *see also* Animal Protection Inst. Of Am. v . Hodel, 860 F.2d 920, 923 9th Cir. 1988) (standing is a necessary element of federal court jurisdiction and the issue must be determined even though the issue was not raised below). Moreover, the burden to prove standing falls upon the party seeking to assert it. McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189, 56 S. Ct. 780, 785, 80 L. Ed. 1135 (1936).

The Ninth Circuit panel had doubts whether Senator Pangelinan had standing on Guam and surprisingly failed to address those concerns, despite the requirement to do so as outlined in FW/PBS, Inc., *supra*. In fact, the Ninth Circuit Panel noted that:

> "[t]he parties have not asked that we review the Superior Court's determination that Guam territorial law supported Plaintiff's standing in Guam's superior court at the outset. (Indeed, it is not clear from the record before us whether that issue was raised on appeal to the Guam Supreme Court.) Thus, although

[3] The January – April 2001 payment is obviously related to the Writ of Certiorari while the May 2001 expenditure are related to the briefs.

> we have jurisdiction under 48 U.S.C. § 1424-2 to review issues of local territorial law, *see infra*, Plaintiff's standing to bring an action in the territorial courts of Guam is not before us and we need address only whether Defendants have constitutional standing to seek relief of this court."

Gutierrez v. Pangelinan, 276 F.2d 539, 545, n. 2. Despite Governor Gutierrez' failure to challenge Senator Pangelinan's standing, under FW/PBS, *supra*, the Ninth Circuit abdicated its independent duty to address his standing, especially after having acknowledged there might be a problem. Moreover, it is logical to conclude that if Senator Pangelinan lacked standing in Guam's courts he would similarly lack standing in the Ninth Circuit. Thus, the Ninth Circuit should have examined Senator Pangelinan's standing under Guam law.

Under Guam law Senator Pangelinan had standing to bring this action solely on his status as a Guam taxpayer. Pangelinan 276 F.2d at 544; *see also* Pangelinan et al v. Gutierrez, SP 00073-98 (Super. Ct. Guam) at 5. If Senator Pangelinan lacked taxpayer standing, the trial court lacked jurisdiction to hear the matter.

Taxpayer standing on Guam is governed by 5 G.C.A. § 7103, which provides in relevant part that "[a]ny taxpayer who is a resident of Guam shall have standing to sue the government of Guam ... and to obtain a **personal** judgment in the courts of Guam...." (emphasis added). Thus, standing under § 7103 constitutes a ***private*** right of action, and for the reasons discussed below, public funds may not be used in a taxpayer lawsuit.

First, the expenditures of public funds for attorney fees and travel in relation to this suit were not "official

business" as provided under the Standing Rules for the Guam Legislature. For example, Rule XXVII, § 27.03 of the Standing Rules for the 24th Guam Legislature states that it is "[t]he policy of the Legislature is that all off-island travel must be performed either for the direct benefit of the government of Guam." Appendix at 104a. The Standing Rules for the 25th and 26th Guam Legislatures have similar provisions. *See* Appendix at 105a – 107a (Sections 27.10 and 27.11 of 25th and 26th Guam Legislatures).

Moreover, Rule XXIII, Section 23.12, of the 25th Guam Legislature's Standing Rules, adopted January 4, 1999, provides that:

> [m]embers shall not initiate ... any civil nor criminal lawsuit, federal, local or otherwise with legislative funds, either under Committee, Senatorial office or other funds, unless prior authorization is obtained from the Chairperson of the Committee on Rules, whether or not suing or being sued in their legislative capacities or otherwise.

Appendix at 102a.

According to Rule XVII, Section 17.12.01(viii) of the 25th Guam Legislature, adopted on January 4, 1999, the Committee on Rules has authority over "all matters relating to the defense or initiation of court action on behalf of *I Liheslaturan Guåhan* [The Guam Legislature], which shall be authorized by Rules Resolution. Appendix at 98a.

Rule XXIII, Section 23.12 of the Standing Rules for the 26th Guam Legislature, adopted January 1, 2000, provides that:

> [m]embers shall *not* initiate nor defend against any civil nor criminal lawsuit, federal, local or otherwise, with legislative funds, either under Committee,

> Senatorial officer or other funds, *unless* prior authorization is obtained from the Chairperson of the Committee on Rules, whether or not suing or being sued in their legislative capacities or otherwise. Any current civil or criminal litigation arising from before this legislative term utilizing legislative funds shall be brought before the committee on Rules for review and action as to whether legislative funds shall continue to be used for the prosecution or defense thereof within thirty (30) days of the beginning of this legislative term.

Appendix 103a.

The 25th Guam Legislature, just like the 26th Guam Legislature, requires a Rules Resolution for the expenditure of funds relating to legal action. *See* Rule XVII, Section 17.10.01(viii) of the 26th Guam Legislature. Appendix at 101a. Moreover, a Rules Resolution does not exist authorizing Senator Pangelinan to begin, or continue using, legislative funds for this lawsuit. Appendix at 119a – 123a (examples of Resolutions authorizing litigation). Thus, since the litigation was not authorized by a Rules Resolution, nor was it confirmed later by Rules Resolution as required by § 23.12, Senator Pangelinan's payments to his attorney in this matter as well as the trip to attend the Ninth Circuit hearing were not "official business" of the Guam Legislature.

Moreover, any litigation to recover misspent funds would not rectify the harm suffered to the Judicial Council stemming from the improperly funded lawsuit. As such, the Pangelinan decision must be vacated or overturned to make the Judicial Council whole.

Second, if Senator Pangelinan's suit was indeed official business, the Legislative Counsel should have

provided representation as provided by 5 G.C.A. § 7115 (enacted by Public Law 24-143 on February 27, 1998). Section 7115, contained in the same chapter as taxpayer standing, provides that:

> [t]he Senators and the Guam Legislature shall have standing to sue under this Chapter. The Legislative Counsel, or Assistant Legislative Counsel, may, as a part of his or her duties for the Guam Legislature, represent members of the Guam Legislature or the Guam Legislature, or both, in bringing suit under this Chapter, provided that in such cases, attorney's fees will not be allowed.

Appendix at 78a. Also, as Rule XVI, Section 16.08(ix) of the 24th Guam Legislature, adopted on January 6, 1997 provides, the Legislative Counsel shall "[r]epresent the Legislature in any legal matters before any courts." Appendix at 97a. Ergo, it stands to reason that the legal counsel should have represented Senator Pangelinan in this matter if his lawsuit was "official business" of the Guam Legislature – this was not the case. Thus, since Senator Pangelinan was not on official business of the Guam Legislature, public monies should not have been used to fund the lawsuit.

Third, it would be an absurd result of law to allow a Senator who loses a vote on a bill to use public funds to set aside the law, obtain a personal judgment and subsequently collect on that judgment. If this decision is upheld, it may serve as a springboard for every Guam Senator who loses a vote on a bill to challenge a bill they dislike utilizing public funds – a situation surely not contemplated by Guam's statutes governing taxpayer lawsuits. Granted, Senator Pangelinan was not asking for monetary damages, however, he did not need to since the Guam taxpayer was footing the bill and he was getting exactly what he wanted – the courts

to overturn a law where he lost the vote. Moreover, as discussed in Section 4, *ante*, the Guam Supreme Court was more than willing to assist Senator Pangelinan in his endeavor given the fact that two of the three sitting justices had publicly expressed disapproval with Bill 495 prior to deciding whether it was valid.

Finally, Senator Pangelinan lacks standing because it appears that he is really dressing up a Senatorial lawsuit as a taxpayer lawsuit. *See* Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972, 83 L. Ed. 1385 (1939) (senatorial standing). Indeed, if Senator Pangelinan was acting in his capacity as a Senator on official business, then he surely cannot claim that the power of his vote was denied him because **the majority of the Guam Legislature voted to pass Bill** 495, while Senator Pangelinan was in the minority of those who voted against it. Also, he cannot claim that the Governor wanted to veto the bill and was somehow prevented from doing so, because **the Governor also wanted the bill to become law.** *See* Appendix C, Petitioner's Amicus Brief, Transmittal Letter of Governor Gutierrez to Guam Legislature. Senator Pangelinan has thwarted the will of the elected majority and turned democracy on its head by using a taxpayer action to proceed where as a Guam Senator he could not. *See e.g.*, Raines v. Byrd, 521 U.S. 811, 117 S. Ct. 2312, 138 L. Ed.2d 849 (1997) (discussing lack of standing for Senators).

In sum, this Court must ask itself whether the Superior Court of Guam Judge would have granted Senator Pangelinan taxpayer standing in this matter if he had known that Senator Pangelinan was using public funds to pay for a private right of action – a fact only discovered by accident **after** the Ninth Circuit's hearing. The Ninth Circuit passed on answering the question and to ensure that justice prevails this Court should not.

II. The Ninth Circuit Abused Its Discretion When It Denied The Judicial Council's Motion To Intervene.

Intervention in the Ninth Circuit is governed by Rule 24 the Federal Rules of Civil Procedure ("FRCP"). Intervention of right, as found in Rule 24(a)(2) of the FRCP governs the bulk of the Judicial Council's Motion to Intervene, and Permissive intervention is covered under Rule 24(b)(2).[4]

The analysis governing the timeliness of the motion is the same for both persuasive and permissive intervention, aside from the fact that permissive intervention is subject to more intense scrutiny. League of United Latin American Citizens v. Wilson, 131 F.3d 1297 (9th Cir 1997). When analyzing or comparing the FRCP with Guam's Rules of Civil Procedure ("GRCP") the analysis is identical because: (1) Guam's statute was taken from the FRCP and is almost a mirror image of it; (2) not one reported case exists analyzing Guam's intervention statute; and (3) cases from jurisdictions from which Guam adopts a statute is persuasive authority. *See* Sauget v. Villagomez, 228 F.2d 374 (9th Cir. 1955); Roberto v. Aguon, 519 F.2d 754 (9th Cir. 1975); Morta v. Korea Insurance Co., 840 F.2d 1452 (9th Cir. 1988); and Guam v. Ojeda, 758 F.2d 403, 406 (9th Cir. 1985) (California evidence cases are persuasive in Guam because both Guam and California have evidence rules based upon the Federal Rules of Evidence). Since Guam based its rules on the FRCP, cases analyzing the FRCP are persuasive when analyzing the GRCP.

It is well settled that a party who has been denied the right to intervene in a Court of Appeals may petition the

[4] The Judicial Council sought intervention as a matter of right as well as permissive intervention.

Supreme Court to review that ruling. Isumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp et al, 510 U.S. 27, 30 114 S. Ct. 425, 426, 126 L. Ed.2d 396 (1993) (citing Automobile Workers v. Scofield, 382 U.S. 205, 208-209, 86 S. Ct. 373, 376, 15 L. Ed.2d 272 (1965)). The Ninth Circuit did not provide any rationale for its denial of the Judicial Council's Motion to Intervene and simply denied all requested relief in a brief order. Appendix at 70a.

The Ninth Circuit in denying the Judicial Council's Motion to Intervene ignored its own past practice and precedent regarding intervention at the appellate stage. For example, the Ninth Circuit has held that FRCP Rule 24 is to be construed "broadly in favor of the applicants for intervention." Sierra Club v. US Environmental Protection Agency, 995 F.2d 1478, 1481 (9th Cir. 1993) (emphasis added); Westlands v. US, 700 F.2d 561, 563 (9th Cir. 1983). Furthermore, all doubts are to be resolved in favor of the proposed intervenors. United States v. Union Electric, 64 F.3d 1152 (9th Cir. 1995).

According to the U.S. Supreme Court, a party seeking to intervene of right need only meet the minimal burden of showing that the representation of his interest may be inadequate. Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n. 10, 92 S. Ct. 630, 636 n. 10, 30 L.Ed.2d 686 (1972). The Judicial Council has met the minimum burden of intervention as a matter of right.

It is evident that the Ninth Circuit panel erred if one closely examines the Circuit's four-part test for intervention pursuant to Rule 24. The test states that: (1) the motion must be timely; (2) the applicant must claim a significantly protectable interest relating to the property or transaction which is the subject of the action; (3) the applicant must be

so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action. Tocher v. City of Santa Ana, 219 F.3d 104 (9th Cir. 2000); Cabazon v. Wilson, 124 F.3d 1050, 1061 (9th Cir. 1997); League of United Latin American Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir. 1997).

A. Timeliness.

In Cabazon, the Ninth Circuit "outlined three criteria for determining whether a motion to intervene is timely: (1) the stage of the proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to intervene." Cabazon, 124 F.3d at 1061 (citations omitted). However, the D.C. Circuit evaluates timeliness by the consideration of all the circumstances. Smoke v. Norton, 252 F.3d 468, 471 (D.C. Cir. 2001).

i. Stage Of Proceedings.

In this instance the Judicial Council is seeking to intervene after the Court of Appeals has rendered its decision – this is not unheard of. *See* Banks v. Chicago Tree Trimmers, 390 U.S. 459 (1968) (intervention granted despite the fact that petitioner did not seek leave to intervene until after the judgement of the Court of Appeals). Moreover, leave to intervene is sometimes granted after the trial court has issued its decision and the matter is being appealed. Bryant v. Yellen, 447 U.S. 352, 366, 100 S. Ct. 2232, 2240 (1980) (party was allowed to intervene when government did not appeal District Court's adverse decision); *see also* Smoke v. Norton 252 F.3d at 471 (post judgment intervention is timely when the potential inadequacy of

representation came into existence only at the appellate stage); Baker v. Wade, 769 F.2d 289, 292 (5th Cir. 1985) (en banc) (Potter County District Attorney granted leave to intervene at appellate stage when Texas Attorney General withdrew a notice of appeal); Meek v. Metropolitan Dade County, 985 F.2d 1471 (11th Cir. 1993) (district court abused its discretion in denying the intervention of individual voters at the appellate stage for the purposes of filing an appeal when a County Commission declined to undertake an appeal); and Wilson v. Minor, 220 F.3d 1297 (11th Cir. 2002).

The Ninth Circuit has also allowed for intervention at the appellate stage. *See e.g.*, Bates v. Jones, 127 F.3d 870 (9th Cir. 1997); Yniguez v. State of Arizona, 939 F.2d 727 (9th Cir. 1991) (non-party realized late in proceedings that Attorney General was not adequately representing their interests) *reversed on other grounds* in 520 U.S. 43, 117 S. Ct. 1055. In fact, the Ninth Circuit has allowed post-judgment intervention for purposes of appeal where "the intervenors act promptly after judgment and meet traditional standing criteria." Legal Aid Soc'y. of Alameda County v. Brennan, 608 F.2d 1319, 1328 (9th Cir. 1979), *cert. denied*, 447 U.S. 921 (1980); United Airlines, Inc. v. McDonald, 432 U.S. 385, 395-96 & n. 16, 97 S. Ct. 2464, 53 L. Ed.2d 423 (1977) (nonparty improperly denied intervention in trial court allowed to pursue appeal). There can be no doubt that an Article III case or controversy exists in this matter and that the Judicial Council has standing to raise the issue. *See* Section 1, *supra*.

ii. Whether Parties Would Be Prejudiced.

The issue here is whether existing parties are prejudiced in their ability to defend the case by delay, not

whether the intervention itself will cause a different substantive outcome. Union Electric, *supra*, 64 F.3d at 1159; League, *supra*, 131 F.3d at 1304. Senator Pangelinan will not be prejudiced in his ability to defend the Supreme Court's decision, nor will the Governor of Guam. The only real effect of intervention is to have the litigation continue – a small price to pay if even one of the Judicial Council's questions have merit.

iii. Reason For Delay.

The reasons for the delay in filing the Motion to Intervene are based on the following factors. First, decorum, tradition and common sense dictate that Judges typically exercise restraint when it comes to initiating lawsuits. Second, the holding in the Supreme Court that P.L. 24-139 was "void ab initio" prompted the discovery of other laws passed in similar factual circumstances to P.L. 24-139. Indeed, the Judicial Council could not have possibly discovered other laws that were until after the Guam Supreme Court's decision was handed down – at which time leave to intervene was promptly sought.

Finally, the Judicial Council has every reason to believe that the two full-time justices who issued negative public statements regarding Bill 495 prior to hearing the matter on its validity would recuse themselves as required by law – unfortunately this did not occur. *See* Section 4, *ante*. Moreover, the Attorney General who argued the matter in the Guam Supreme Court for Governor Gutierrez, failed to move for recusal – although admittedly his knowledge of the need to move for recusal was limited by the lack of disclosure on the Justices' part as required by law. Also, as pointed out in several circuits, a judge's failure to recuse himself is reviewable only after final judgment. *See*

Pittsburgh v. Simmons, 729 F.2d 953, 954 (3rd Cir. 1984) (judge's failure to recuse himself is reviewable only after final judgment); Cleveland v. Krupansky, 619 F.2d 576, 578 (6th Cir. 1980), *cert denied*, 449 U.S. 834, 101 S. Ct. 106, 66 L. Ed.2d 40 (1980).

The fact that the Judicial Council is moving at such a late stage in the litigation is not fatal and is quite proper under these extraordinary circumstances. Indeed, it is not the length of time that is critical, rather it is the fact that you move quickly once your previously protected interests are no longer being protected. United Airlines v. McDonald, 432 US at 394; League, *supra*, 131 F.3d at 1304; US v. Washington, 86 F.3d. 1499, 1503 (9th Cir. 1996). In this case, the Judicial Council did indeed move quickly once it discovered that its interests were not adequately being protected.

B. Interest In The Lawsuit.

In general a party must have a protectable interest of sufficient magnitude to warrant inclusion. Sierra Club v. Glickman, 82 F.3d 106, 109 (9th Cir. 1996). In this case there are three interests that warrant intervention. First, the Judicial Council as presently constituted will cease to exist thereby constituting a direct harm to its members. Second, more than two years worth of decisions and resolutions rendered by the Judicial Council members under P.L. 24-139 are in danger of being nullified. *See* Appendix A, Petitioner's Amicus Brief. Third, it is likely that more than fifty (50) laws will be rendered void "ab initio" by this Court's decision. *See* Appendices K-N of Petitioner's Amicus Brief, *see also,* R. Stern, E. Gressman, and S.M. Shapiro, Supreme Court Practice 860-885 (6th ed., 1986) (discussion on adverse effects). The Judicial Council has

found at least three (3) laws that are **factually identical** to Bill 495. Id., at Appendix K. Guam's Pacific Daily News, independently identified more than twenty (20) laws that also may be subject to litigation on the same grounds. *See* Steve Limtiaco, *Court ruling casts doubt on legality of similar measures*, Pacific Daily News, March 11, 2002, at 5.

C. Judicial Council Will Be Adversely Affected.

If intervention is not granted, the Pangelinan decision will adversely affect the Judicial Council based on the reasons set forth in Subsection B above.

D. Inadequate Representation.

This factor requires only a minimal burden but it is the most important when evaluating the Judicial Council's Motion to Intervene. United Airlines v McDonald, 432 US at 394 (former party decided to forego appeal); Bryant v Yellen, *supra*, 447 US at 366-67; Sagebrush Rebellion Inc. v. Watt, 713 F.2d 525, 528 (9th Cir. 1983). If a party whose interests are divergent of yours fails to use procedural devices or otherwise offer evidence that is otherwise available, it most certainly calls into question the adequacy of representation. In this case, Governor Gutierrez has declined to pursue an appeal of this matter to this Court which constitutes inadequate representation. *See* Yniguez v. State of Arizona, 939 F.2d 727, 734-735 (9th Cir. 1991).

In addition, counsel for Governor Gutierrez did not seek recusal of the Guam Supreme Court Justices. The Judicial Council strongly believes the recusal issue has affected the outcome of this litigation, especially in light of the deferential standard used by the Ninth Circuit when reviewing Guam Supreme Court decisions under 48 U.S.C. §

1424-2. *See* Pangelinan, 276 F.3d at 546; *see also* discussion on recusal in Section 4, *ante*. Moreover, counsel for Governor Gutierrez glazed over the number and scope of the laws that are at risk of also being declared "void ab initio."

This Writ is especially important considering the fact that Governor Gutierrez did not seek a rehearing with the Ninth Circuit, despite having knowledge that the Ninth Circuit panel questioned whether Senator Pangelinan had standing under Guam law. Moreover, the Judicial Council sought promptly to intervene once it became clear that Governor Gutierrez was not adequately representing its interests. We have also shown that the Judicial Council possesses the right to intervene and appeal under FRCP Rule 24.

In sum, when one considers the fact that the Judicial Council's interests were being adequately represented by Governor Gutierrez until the appellate stage[5] and that the burden is placed upon Senator Pangelinan to join the Judicial Council instead of being on the Judicial Council to join, the actions of the Judicial Council were reasonable under the circumstances.[6] *See* Martin v. Wilks, 490 U.S. 755, 765, 109 S. Ct. 2180, 2186, 104 L. Ed.2d 835 (1989) (it makes more sense to place the burden on the party bringing a lawsuit to join all interested parties rather than to place on all additional parties the duty to intervene).

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[5] Governor Gutierrez did challenge Senator Pangelinan's standing in the trial court but did not raise the issue on appeal.

[6] Under Rule 19 of Guam's Rules of Civil Procedure, mandatory joinder applies when "the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest..."

III. Did The Ninth Circuit Court of Appeals Err Regarding Whether A Pocket Veto "In Fact" Occurred, Notwithstanding A Perceived Lack Of Procedures Governing The Return Of A Bill During Temporary Legislative Adjournments?

The Ninth Circuit Panel held "the proper resolution of this controversy turns on whether the Guam Legislature 'by adjournment prevent[ed] [Bill 495's] return." Pangelinan, 276 F.3d at 547 (citing 48 U.S.C. 1423i). The Guam Supreme Court and the Ninth Circuit Panel failed to adequately analyze the issue and overlooked certain facts, namely: (1) Bill 495 was in fact returned during an adjournment; (2) the adjournment at issue was not an adjournment sine die as in the Pocket Veto Case, 279 U.S. 655, 672, 49 S. Ct. 463, 464 (1929); and (3) adequate procedures were in place to provide for the bills return.[7]

A "pocket veto" occurs when a president or governor fails to take action on a bill while the legislative body is in adjournment and, during the adjournment, the time within which to take action on the bill expires. Blacks Law Dictionary, Revised Fourth Edition (1968). By contrast, if a legislative body remains in session and a president or governor fails to take any action on a bill, the bill becomes law. 48 U.S.C. § 1423i. Section 1423i, which is almost identical to Article 1, § 7, cl. 2 of the United States Constitution, provides in pertinent part that a bill shall become law in the absence of the Governor's signature

[7] If the Judicial Council's Motion to Intervene was improperly denied, then the Judicial Council may properly seek review of the merits of the decision because it had the right to seek a rehearing and would have ninety (90) days to seek review of the merits following the denial of the Petition for Rehearing. *See* Rule 13 of the United States Supreme Court Rules.

"unless the legislature by its adjournment prevents its return . . . ."

A. The Governor Was Not In Fact Prevented From Returning Bill 495.

Although the Supreme Court held that the Governor was prevented from returning Bill 495 during an adjournment of the Legislature, the transmittal letter involving Bill 495 was duly received by the Legislative Secretary on February 23, 1998 – during a so-called legislative adjournment! Thus, the Governor was not prevented "in fact" from returning Bill 495 during adjournment because it was not an adjournment sine die.

B. The Governor Was Not Prevented By Law From Returning Bill 495.

i. The Supreme Court Ignored "Long Standing Traditions."

In the The Pocket Veto Case, 279 U.S. at 689, the United States Supreme Court held that "long established practice" was important in determining whether a pocket veto occurred. The Guam Supreme Court held the opposite and stated that "past practice is irrelevant." Pangelinan, (Supreme Ct.) at 10.

In Bordallo v. Camacho, 520 F.2d 763 (9th Cir. 1975), this court held that the Governor was prevented from returning a bill within the ten (10) day period due to an adjournment of the Guam Legislature. This holding was premised largely on the fact that there was no provision for interim message delivery between the Governor and the Legislature. Id. However, as the Supreme Court's decision

states, Bordallo also stands for the proposition that constructive delivery of bills to the Legislature during legislative absences is probably adequate. Pangelinan, (Supreme Ct.) at 7.

In response to the holding in Bordallo the Guam Legislature enacted 2 G.C.A. § 1118 in 1976. Section 1118(c), as it read at the time of the initiation of this lawsuit, provides a mechanism for delivery of bills to the Legislature and provides:

> [a]t any time when the Legislature is in recess the Legislative Secretary is empowered to and shall receive any messages or communications of any kind addressed to the Legislature from the Governor. For purposes of this Paragraph [sic] receipt of messages or communications of any kind from the Governor to the Legislature shall occur if delivered to the Legislative Secretary or to the Office of the Legislative Secretary.

The question then arises whether there is any legal significance to the fact the Legislature interchangeably uses the term "adjournment" rather than "recess," and whether use of the term "adjournment" was intended to preclude the Governor from transmitting messages to the Legislative Secretary under section 1118(c), which employs the term "recess."

In practice, Guam has never recognized a distinction between the two terms. Subsequent to the adoption of § 1118, during periods of "adjournment," many bills became law in Guam without signature by the Governor. *See* Appendix K, Petitioner's Amicus Brief. The Legislature and the Governor both assumed these bills could be transmitted to the Legislature during an adjournment that was not Sine

die – strong evidence that was what the Legislature intended when it enacted § 1118(c).

As the Superior Court observed, § 1118 was enacted in response to this Court's opinion in Bordallo. Pangelinan, (Superior Ct.) at 17. It is clear that § 1118(c) was intended to address the pocket veto problem in Bordallo by providing for a legislatively designated agent to receive bills while the Legislature was on break. Having gone to the trouble of drafting legislation appointing the Legislative Secretary its agent for the purpose of receiving messages, it defies logic that the Legislature would then divest the Legislative Secretary of authority to receive messages by routinely declaring adjournments rather than recesses.

The Legislature which enacted § 1118 clearly saw no difference between the two procedures and must have intended to delegate authority to the Legislative Secretary to receive messages during all legislative breaks, whether the breaks were called "adjournments," "adjournments subject to the call of the speaker," or "recesses." *See* Appendices L – N, Petitioner's Amicus Brief. This interpretation is consistent with United States Supreme Court cases on the subject as well as the holding in Kennedy v. Sampson, 511 F.2d 430 (DC Cir. 1974) (holding that an artificial formality may not prevent the exercise of a constitutional right, i.e., ability of Congress to override a veto). The Superior Court noted this distinction in its decision. Pangelinan, (Superior Ct.) at pp. 15-19.

In fact, the practice of "adjourning" or adjourning "subject to the call of the Speaker" has continued unabated from 1976. If the Supreme Court's reading of § 1118(c) is correct, all laws fitting the fact pattern of Bill 495 are "void ab initio." The record shows the legislature followed its

usual practice in handling Bill 495 in that: (1) the bill was voted on and then passed; (2) the bill was transmitted to the Governor; (3) the Legislature adjourned "subject to the call of the Speaker;" (4) the Governor returned the bill unsigned; and (5) the Governor thought the return was valid.

In sum, the only rational reading is that § 1118(c) includes "adjourn" "adjourn subject to the call of the speaker" but not "adjournment sine die." To interpret § 1118 in any other way ensures an absurd result that the law disfavors.

ii. **The Decision Will Possibly Invalidate Fifty-nine (59) Laws.**

The Judicial Council has discovered fifty-nine (59) laws that may be affected by this Court's decision. *See* Appendix K, Petitioner's Amicus Brief. For instance, the facts surrounding the passage of Public Law 19-1, an appropriation act for operational funds for the first session of the 19th Guam Legislature, is almost factually identical to the passage of Bill 495. *See* Appendix N, Petitioner's Amicus Brief. The facts surrounding the passage of P.L. 19-1 are as follows: (1) the Bill passed by a majority in the Legislature; (2) the Legislature adjourned "subject to the call of the Speaker; (3) the Governor returned the bill unsigned after the ten (10) days as required by § 1423i; and (4) [then] Governor Ada, stated that he had "decided to allow it to pass into law without [his] signature." Id.

There are other laws that Judicial Council has found in this short space of time that also fit into this category such as Public Law 21-129 and Public Law 24-22. Id. This list is not exhaustive – it is just the tip of the proverbial iceberg. In sum, the Pangelinan decision will: (1) clog judicial

calendars; (2) make the people of Guam uncertain as to what laws are valid; and (4) negatively impact Guam's economy.

IV. Whether Governor Gutierrez And The Judicial Council Were Denied Due Process When Certain Guam Supreme Court Justices Failed To Recuse Themselves After Having Formed A Negative Opinion About Bill 495 Prior To Hearing Whether Bill 495 Was Valid.

"A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942 (1955). "[F]airness of course requires an absence of actual bias." Id. Also, "to perform its high functioning in the best way 'justice must satisfy the appearance of justice.'" Id., (citing Offutt v. U.S, 348 U.S. 11, 14, 75 S. Ct. 13, 11, 99 L. Ed. 11 (1954). This Court similarly held that it is a violation of the "Fourteenth Amendment ... to subject [a person's] liberty or property to the judgment of a court they judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed.2d 823 (1986); (citing Tumey v. Ohio, 273 U.S. 510, 523, 47 S. Ct. 437, 441, 71 L. Ed. 749 (1927). Moreover, "[w]hen the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from review and we must presume the process was impaired." Vasquez v. Hillery, 474 U.S. 254, 263, 106 S. Ct. 617, 623, 88 L. Ed.2d 598 (1986).

Governor Gutierrez, the Judicial Council and the People of Guam were denied due process under the Fourteenth Amendment of the United States Constitution when two Guam Supreme Court justices sat on a case in

which they not only had a direct stake in the outcome and had other reasons to recuse themselves, but they had made serious negative public pronouncements regarding the passage of Bill 495 which was the subject of the controversy. For example, Justice Siguenza, in reference to the passage of Bill 495, stated that **"Lady Justice is in critical condition and on life support after being raped by a common thug and several gang members six days ago."** *See* the 1998 Judicial Address by Justice Siguenza at http://www.justice.gov.gu/supreme/JudicialAddresses.html, *see also* Appendix H, Petitioner's Amicus Brief. If Justice Siguenza's comments do not constitute an extreme form of bias what does? Justice Cruz also made negative comments regarding Bill 495. Id.

The Ninth Circuit has adopted a deferential standard of review for Guam Supreme Court decisions that examine local law. Pangelinan, 276 F.3d at 546. The Court also held that "ordinarily we will affirm the Guam Supreme Court's interpretation of a Guam statute 'where ... the Guam Supreme Court appears to have construed [the] statute **reasonably and fairly**.'" Id., citing EIE Guam Corp. v. Supreme Court of Guam, 191 F.3d 1123 (emphasis added). It is the contention of the Judicial Council that decision of the Supreme Court of Guam in this matter was neither fair nor reasonable as is discussed in detail below.

Pursuant to Guam's recusal statute, a judge must disqualify himself when his "impartiality might reasonably be questioned." 7 Guam Code Annotated ("G.C.A.") § 6105(a). This statute applies to Supreme Court justices. Id. Section 6105 states in relevant part that:

> (a) [a]ny Judge shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned, but if, following

> complete disclosure to all parties in the proceeding of the reasons for disqualification, all parties agree to having the Judge continue to sit in the proceedings, he or she need not disqualify himself or herself.

(emphasis added).

As the Guam Supreme Court has held, the standard for such a recusal is whether "the judge's impartiality might reasonably be questioned." Dizon v. Superior Court of Guam, 1998 Guam 3 (May 13, 1998) at n. 3.[8] The Court also held that "no actual showing of bias is necessary for recusal to lie." Dizon at 2.

In the transcripts of the proceeding Chief Justice Cruz acknowledged that there was a [conflict] problem and stated that "the Supreme Court has a direct interest in the outcome of the appeal." Appendix F, Petitioner's Amicus Brief. Chief Justice Cruz even asked if there was to be a "formal motion." Id. No recusal motion was filed by either party.

However, section 6105 does not require a formal motion, rather **the law requires judges to recuse themselves**, *unless* after complete disclosure the parties agree to have the judge hear the case. *See* § 6105. Moreover, as the plain language of the statue indicates, the burden is not on the parties, rather the burden is on the individual judges to recuse themselves unless they fully disclose. Id.

In this case, no disqualification was made and there was a complete lack of disclosure as to the underlying reasons for the conflict. Id. In fact, the disclosure needed to

[8] Ironically, Dizon was handed down by Justices Siguenza and Cruz.

cover at least the following issues: (1) the fact that both Justices had previously recused themselves in matters involving the firm representing Senator Pangelinan;[9] (2) the fact that Justices Siguenza and Cruz had made negative public statements regarding Bill 495 prior to hearing the matter; (3) P.L. 24-139 involved a clarification of the certain administrative powers of the Superior Court and the Supreme Court;[10] and (4) all full-time justices would become members of the Judicial Council if P.L. 24-139 was declared void. *See* Appendix I, Petitioner's Amicus Brief (explanation of the changes in the structure of the Judicial Council), *see also* Justice Cruz's March 14, 2000 letter to Judge Lamorena regarding his intent to appoint a "temporary justice" to the Judicial Council after Pangelinan was handed down in Ninth Circuit and prior to mandate issuing).[11]

As such, a reasonable person couldn't help but doubt the ability of Justices Siguenza and Cruz to be impartial. Moreover, as counsel for Senator Pangelinan noted, and as contained in Rule 35 of the Guam Rules of Appellate Procedure for the Supreme Court of Guam, there is a mechanism whereby designated Justices can sit on cases when the full-time Justices must recuse themselves.[12]

The trial judge who heard the decision in the Superior Court was not outwardly biased towards Bill 495 nor does he

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[9] *See* Appendix G, Petitioner's Amicus Brief.

[10] *See* Pangelinan 2001 Guam 11, n 1.

[11] The intent by the Chief Justice to appoint a temporary justice violates the separation of powers on two levels. *See* 7 G.C.A. § 3103. First, it deprives the Governor of his power to appoint the justice. Id. Second it deprives the Legislature of its ability to confirm the appointment. Id.

[12] *See* http://www.justice.gov.gu/Supreme/RULESpage.htm.

have a conflict with Senator Pangelinan's counsel. The judge also took active steps to ensure that no questions of bias arose by recusing himself from the Judicial Council during the period he was deciding the case. *See* e.g., Judicial Council Resolutions Nos. 05-99 through 19-99 at Appendix A of Petitioner's Amicus Brief (showing recusal of Judge Unpingco). In addition, there is no indication that the trial judge had a predisposed outcome – unlike the Supreme Court justices who were publicly opposed to Bill 495. Indeed, a perusal of Appendix H of the Judicial Council's Amicus Brief shows that the motives of the two above-name Guam Supreme Court justices was anything but innocuous.

As discussed above, a manifest injustice would occur to allow the decision to stand, especially in light of the deferential standard the Ninth Circuit applies to Guam cases. In other words, under the deferential standard "reasonable and fair" opinions of the Supreme Court of Guam will be upheld. However, if the process by which the Supreme Court of Guam reached its decision was unfair then the decision itself cannot be said to be neither "reasonable" nor "fair."

By virtue of 48 U.S.C. §1424-2, this Court has been placed in a position to provide some guidance on this issue and it should exercise its duty under federal law and protect the integrity of the judicial processes of Guam.

CONCLUSION

The Writ of Certiorari should issue in this case, if for no other reason than to prevent some legal muggings. The Judicial Council was mugged when it watched two Guam Supreme Court Justices sit on Pangelinan, despite the fact that they had made prior negative public statements about Bill 495 prior to sitting on the matter as well as having a host

of other reasons why they should recuse themselves. The Judicial Council was also taken aback when the Ninth Circuit tacitly approving the actions of the Guam Supreme Court Justices.

The People of Guam were also mugged when the majority of their elected representatives voted for Bill 495 only to see it overturned by the Guam Supreme Court, whose decision was upheld by the Ninth Circuit. The Governor was similarly mugged because P.L. 24-139 was declared "void ab initio" despite his intent that Bill 495 become law.

Finally, the People of Guam became victims when they learned that public funds had footed the bill for it all, despite the majority of their duly elected legislative official having voted in favor of Bill 495, and despite having the Governor's also the bill to become law.

In sum, if this Court does not allow the Judicial Council to intervene, not only will the People of Guam remain victims they will most certainly again become victims at some point in the future. It is up to this Court to ensure that the doctrine of "majority rule" is upheld, that public monies on Guam are spent in accordance with law and the faith lost by the people of Guam in its Supreme Court is restored.

Respectfully submitted this 6th day of June, 2002,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VICENTE C. PANGELINAN, Senator, and JOSEPH C. WESLEY, Mayor, on behalf of themselves and all those similarly situated,
Plaintiffs-Appellants,

vs.

CARL T.C. GUTIERREZ, Governor, Y'ASELA A. PEREIRA, Treasurer, the GOVERNMENT OF GUAM, and DOES 1 THROUGH 10,
Defendants-Appellees,

No. CIV.00-70447

Argued and Submitted May 15, 2001
Filed Jan. 10, 2002

Eric A. Heisel, Hagatna, Guam, for the petitioners.
Stephanie G. Flores, Michael F. Phillips, Phillips & Bordallo, Hagatna, Guam, for the respondents.
Samuel J. Taylor, Hagatna, Guam, for the amicus.

On Petition for Writ of Certiorari to the Supreme Court of the Territory of Guam. Guam Sup. Ct. No. CV-99-00020.

Before: B. FLETCHER, CANBY, and PAEZ

PAEZ, Circuit Judge:

At the end of the 24th Guam legislative session, the Legislature passed Substitute Bill No. 495 ("Bill 495") and adjourned. The bill was presented to Governor Carl T.C.

Gutierrez during the Legislature's adjournment, and he neither vetoed nor signed it. Instead, he returned the unsigned bill to the Legislature stating that he "allowed[] Bill No. 495 to go into law without benefit of the signature of the Governor." Opponents of Bill 495, Senator Vicente C. Pangelinan and Mayor Joseph C. Wesley, brought this action in the Superior Court of Guam against the Governor, Treasurer Y'Asela A. Pereira and the Government of Guam, seeking a declaration that Bill 495 did not lapse into law and an injunction against implementation and enforcement of its provisions. Plaintiffs argued that the Legislature's failure to adopt procedures for receiving gubernatorial messages during its adjournment resulted in a "pocket veto." The superior court rejected Plaintiffs' arguments and entered judgment for Defendants, upholding the validity of the bill.

On appeal, the Supreme Court of Guam reversed. *Pangelinan v. Gutierrez*, 2000 Guam 11, 2000 WL 263216, at *9 (Guam Mar. 10, 2000). The court held that under section 19 of the Organic Act of Guam (codified at 48 U.S.C. § 1423i), the Legislature's failure to adopt adequate procedures *543 for receipt of gubernatorial messages before it adjourned resulted in a pocket veto, despite the Governor's intent to allow Bill 495 to become law without his signature. The Guam Supreme Court also held that subsequent duly-enacted laws did not ratify Bill 495.

We conclude, as an initial matter, that the Governor has Article III standing to seek relief in this court. On the merits, we agree with the Guam Supreme Court that there was a pocket veto of Bill 495 and that the bill was not ratified. Accordingly, we affirm.

I. *Background*

A. Bill 495

On February 7, 1998, the 24th Guam Legislature passed Bill 495, with 11 votes in favor and 10 votes opposed. Bill 495 contained provisions meant to update Guam's Solid Waste Management Plan. A rider attached to Bill 495 reorganized the judicial branch of Guam's government. Later that day, the Legislature adjourned.

On February 10, 1998, Bill 495 was presented to Governor Gutierrez. On February 22, 1998, the Governor sent the bill, unsigned, to the Speaker of the Legislature. In a letter accompanying the bill, the Governor indicated he was allowing Bill 495 to lapse into law without his signature. The Legislature received the letter on the following day. The record does not reflect who received the letter.

The Legislature reconvened on February 26, 1998, nineteen days after it had adjourned. As of March 12, thirty days after Bill 495 had been presented to the Governor, he had not signed it.

The Legislature subsequently enacted two laws, both signed by the Governor, that referred to Bill 495 as a public law,[1] that is, as an enacted law.

B. *Legal Challenge*

On March 18, 1998, Vicente Pangelinan, one of the ten senators who had voted against Bill 495, and Joseph Wesley, the mayor of Santa Rita, Guam, filed suit in the Superior Court of Guam, seeking a declaration that Bill 495 had not been duly enacted and an injunction enjoining its implementation. The complaint named Guam's Governor

[1] Bill 495 was subsequently designated as Public Law No. 24- 139.

and Treasurer and the Government of Guam as defendants. The complaint alleged that the Guam Legislature, by adjourning and failing to properly designate an agent for receipt of the Governor's veto or signed bill, had "prevent[ed]" Bill 495's return by the Governor within the meaning of § 1423i; therefore, under § 1423i, the Governor's inaction resulted in the pocket veto of Bill 495.

In the superior court, Defendants challenged Plaintiffs' standing to bring this action. Defendants also challenged Plaintiffs' interpretation of § 1423i, arguing that the Governor's inaction had the effect of permitting Bill 495 to pass into law. The superior court determined that Plaintiffs had taxpayer standing under title 5, section 7103 of the Guam Code. Addressing the merits, the superior court identified the central question as "whether ... the Legislature authorized an appropriate agent for the return of bills when they adjourned on February 7, 1998." The superior court held that the Legislature had authorized an appropriate agent and therefore had not "prevented" the return of Bill *544 495. The superior court entered judgment for Defendants.

The Guam Supreme Court reversed. *Pangelinan*, 2000 WL 263216, at 9. Rejecting the superior court's reasoning, the Guam Supreme Court concluded that the Legislature had not established adequate procedures for the return of bills during its adjournment. *Id.* at *6. Thus, the Governor's failure to sign Bill 495 resulted in a pocket veto. *Id.* The Guam Supreme Court also rejected Defendants' alternative argument that, by acknowledging Bill 495 as a law in later enactments, the Legislature had ratified the bill. *Id.* at *8. Defendants then sought rehearing en banc, which the Guam Supreme Court denied. Defendants filed a petition for writ of certiorari with this court, which we granted.

II. Discussion

We have the authority to review decisions of the Guam Supreme Court under 48 U.S.C. § 1424-2. However, we must first address the threshold question of whether the Governor has Article III standing to pursue this petition in federal court.

A. *Standing*

It is doubtful that Plaintiffs would have had standing to seek relief in federal court at the outset of this case. Defendants, on the other hand, allege sufficient injury from the Guam Supreme Court's ruling to confer standing in this court.

As the Superior Court of Guam noted, state courts (and by extension, territorial courts) are not bound by Article III requirements and in state courts "standing is a self-imposed rule of restraint." Relying on a special provision of the Guam Code that confers broad taxpayer standing, the court held that Senator Pangelinan and Mayor Wesley had standing to bring this action in the territorial courts of Guam based solely on their status as taxpayers and on the fiscal effect of Bill 495. Taxpayer status alone ordinarily does not confer Article III standing to challenge general exercises of governmental power. *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 479, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). The record discloses no other basis for Plaintiffs' standing.

This does not end the standing inquiry, however. The Governor contends that his Article III standing stems from his allegations of injury from the Guam Supreme Court's decision. We agree.

In *ASARCO Inc. v. Kadish*, the United States Supreme Court addressed an analogous situation arising from its review of the final decision of a state's highest court. 490 U.S. 605, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989). The plaintiffs in *ASARCO* brought a civil action in the Arizona courts, which, the United States Supreme Court concluded, the plaintiffs would not have been able to bring in the first instance in federal court. 490 U.S. at 616-17, 109 S.Ct. 2037 ("Our review discloses no basis on which to find that respondents would satisfy the requirements for federal standing articulated by our precedents.... [T]he suit would have been dismissed at the outset were the federal rule to apply."). The plaintiffs prevailed in the Arizona Supreme Court.

The defendants, petitioners before the United States Supreme Court, argued that the decree of the state's highest court had created an injury cognizable in federal court, although none had existed before the state court proceedings were complete. *545 The Supreme Court agreed. *Id.* at 617-18, 109 S.Ct. 2037.

The Court explained that what matters is whether "the parties first invoking the authority of the federal courts" can establish each prong of the constitutional standing requirements at the time federal court jurisdiction is invoked. *Id.* at 618-19, 109 S.Ct. 2037. Summarizing its holding, the Court stated:

> When a state court has issued a judgment in a case where plaintiffs in the original action had no standing to sue under the principles governing the federal courts, we may exercise our jurisdiction on certiorari if the judgment of the state court causes direct, specific, and concrete injury to the parties who petition for our review, where the requisites of a case

or controversy are also met. *Id.* at 623-24, 109 S.Ct. 2037.

For purposes of determining whether a case or controversy exists here, it does not matter then whether Plaintiffs could have met federal standing requirements at the time they brought this civil action in the territorial courts of Guam.[2] Rather, we have jurisdiction if Defendants allege a specific injury from the decision of the Supreme Court of Guam.

We conclude that the Guam Supreme Court's decision causes a sufficiently "direct, specific, and concrete injury" to Governor Gutierrez to establish his standing to bring this petition.[3] Our conclusion follows from the Supreme Court's decisions in *Coleman v. Miller*, 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385 (1939), and *Raines v. Byrd*, 521 U.S. 811, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997). In *Coleman*, members of the Kansas Senate brought a civil action challenging the legitimacy of a resolution that had been passed by the Senate by one vote. The plaintiffs argued that their votes should have been sufficient to defeat the resolution, and

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[2] The parties have not asked that we review the superior court's determination that Guam territorial law supported Plaintiffs' standing in Guam's superior courts at the outset. (Indeed, it is not clear from the record before us whether that issue was raised on appeal to the Guam Supreme Court.) Thus, although we have jurisdiction under 48 U.S.C. § 1424-2 to review issues of local territorial law, *see infra*, Plaintiffs' standing to bring an action in the territorial courts of Guam is not before us and we need address only whether Defendants have constitutional standing to seek relief in this court.

[3] The standing of the Governor is sufficient to sustain jurisdiction; we need not address the standing of the other defendants. *See Legal Aid Soc'y of Alameda County v. Brennan*, 608 F.2d 1319, 1334 (9th Cir.1979)

that the resolution had passed only because, contrary to law, the Lieutenant Governor of Kansas had cast a tie-breaking vote. The United States Supreme Court held that the plaintiffs had standing because they had a "plain, direct and adequate interest in maintaining the effectiveness of their votes." 307 U.S. at 438, 59 S.Ct. 972. The Court explained that, "[h]ere, the plaintiffs include twenty senators, whose votes against ratification have been overridden and virtually held for naught although if they are right in their contentions their votes would have been sufficient to defeat ratification." *Id.* "They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect and the state court has denied that right and privilege." *Id.*

In *Raines*, the Supreme Court explained that the critical fact in *Coleman* was that if the plaintiff-senators were correct on the merits, their votes should have been sufficient to effect a particular result (defeat of the resolution); but the allegedly illegal *546 act instead effected the opposite result (certification of the resolution). 521 U.S. at 822-23, 117 S.Ct. 2312. As summarized by *Raines*, the "holding in *Coleman* stands ... for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." *Id.* at 823, 117 S.Ct. 2312.

For purposes of standing, Governor Gutierrez's position in this litigation is analogous to that of the senators in *Coleman*. He argues that § 1423i granted the Governor the power to allow Bill 495 to pass into law by

neither signing nor vetoing it. The Guam Supreme Court's ruling, however, had the opposite effect: the Governor's inaction, in light of the legislature's failure to adopt appropriate procedures for receipt of the bill from the Governor, resulted in a pocket veto of Bill 495. Under *Coleman* and *Raines*, the nullification of Governor Gutierrez's asserted prerogative establishes his standing.

B. *Appellate Jurisdiction and Scope of Review*

For the first fifteen years following the establishment of the Supreme Court of Guam, this court has "jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had."[4] 48 U.S.C. § 1424-2. Under § 1424-2, we have jurisdiction not only over federal issues, but over local issues as well. *Id.* In exercising this discretionary power of review, it is evident that we must balance the temporary power of oversight that Congress has given us with Congress's clear intent "to allow Guam to develop its own, independent institutions." *EIE Guam Corp. v. Supreme Court of Guam*, 191 F.3d 1123, 1127 (9th Cir.1999).

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[4] This petition falls within the fifteen year period. In 1984, Congress enacted 48 U.S.C. § 1424-1(a), which authorized the Guam Legislature to create a local appellate court. Act of Oct. 15, 1984, Pub.L. 98-454, 98 Stat. 1742. Shortly thereafter, the Guam Legislature drafted a statute authorizing the creation of the Supreme Court of Guam. *See* Comment, 7 Guam Code Ann. § 1101 (statutes creating Supreme Court drafted in 1985). However, the Supreme Court of Guam did not begin to hear cases until rules for the court were established, the Justices were sworn in, and the Chief Justice certified that the court was ready to undertake its responsibilities, a process that only recently was completed. *See In re Habib*, 1996 Guam 7, 1996 WL 924521, at *3 (1996) ("the Supreme Court did not yet exist" in 1994).

Accordingly, we review decisions of the Guam Supreme Court that bear on local law differently from those that interpret federal law. We have adopted a deferential standard of review for Guam Supreme Court decisions examining local law, that is, decisions that interpret laws enacted by the Guam Legislature or develop Guam's common law. *Id.* Thus, ordinarily we will affirm the Guam Supreme Court's interpretation of a Guam statute "where ... the Guam Supreme Court appears to have construed [the] statute reasonably and fairly." *Id.*

Our review of the Guam Supreme Court's interpretation of Guam's Organic Act calls for a slightly different analysis. Because Guam's Organic Act is an Act of Congress, interpretations of that Act are subject to *de novo* review. *Ada v. Gov't of Guam*, 179 F.3d 672, 676 (9th Cir.1999), *rev'd on other grounds*, *Gutierrez v. Ada*, 528 U.S. 250, 120 S.Ct. 740, 145 L.Ed.2d 747 (2000). Although our review is *de novo,* we consider fully the Guam Supreme *547 Court's explication of legal issues of unique concern to Guam. The Organic Act, as we have recognized, "serves the function of a constitution for Guam," *Haeuser v. Dep't of Law, Gov't of Guam*, 97 F.3d 1152, 1156 (9th Cir.1996), and the congressional promise of independent institutions of government would be an empty one if we did not recognize the importance of the Guam Supreme Court's role in shaping the interpretation and application of the Organic Act.

C. *Merits*

1. *Pocket Veto*

At the heart of this controversy is the Governor's

contention that, through his deliberate inaction, Bill 495 passed into law pursuant to § 1423i. We reject the contention.

The rules for presentment of a bill to the Governor of Guam for consideration are set forth at 48 U.S.C. § 1423i:

> Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, *unless the legislature by adjournment prevents its return,* in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. (emphasis added).

When the Governor returns a veto message, § 1423i provides a procedure whereby the legislature can override the veto: "the legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law."

Thus, when the Guam Legislature presents a bill to the Governor, ordinarily inaction by the Governor results in the bill becoming a law. 48 U.S.C. § 1423i. If, however, the Legislature "by adjournment prevents [a bill's] return," the Governor's inaction is treated as a pocket veto. *Id.* The proper resolution of this controversy turns on whether the Guam Legislature "by adjournment prevent[ed] [Bill 495's] return."

We previously have suggested that, if the Guam Legislature makes "appropriate arrangements ... for the receipt of [gubernatorial] messages during the adjournment," adjournment will not prevent a bill's return. *Bordallo v. Camacho*, 520 F.2d 763, 764 (9th Cir.1975) (quoting *Kennedy v. Sampson*, 511 F.2d 430, 437 (D.C.Cir.1974)) (internal quotation marks omitted). In *Bordallo*, we noted that the Guam Legislature had "failed to designate an officer to receive messages from the Governor" and failed to "provide for the receipt, filing, routing, and safekeeping of such messages as might be delivered to the Legislature during a recess." *Id.* at 764. Therefore, we concluded that appropriate arrangements had not been made. *Id.* at 764-65. We emphasized that, "in view of the ease with which the Guam Legislature could have made such provisions if it thought the prospect of a pocket veto to be undesirable," our decision in no way impeded the Legislature from avoiding pocket vetoes in the future. *Id.* at 765.[5]

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[5] We recognize that *Bordallo*, a per curiam opinion, presents an abbreviated explanation of its holding. As the Guam Supreme Court recognized, though, *Bordallo*'s principal proposition--that the legislature may designate agents for return of a veto message, provided it adopts specified minimum procedural safeguards--follows from the principles established in the U.S. Supreme Court's seminal decisions in *The Pocket Veto Case*, 279 U.S. 655, 49 S.Ct. 463, 73 L.Ed. 894 (1929) and *Wright v. United States*, 302 U.S. 583, 58 S.Ct. 395, 82 L.Ed. 439 (1938), which addressed the federal Constitution's pocket veto clause. U.S. Const. art. I, § 7, cl. 2. The principles established in those cases govern our interpretation of 48 U.S.C. § 1423i because § 1423i incorporates the language of the federal pocket veto provision. Congress can be presumed to have been aware of the Supreme Court's interpretation of the federal constitutional provision in *The Pocket Veto Case* and *Wright* when Congress enacted § 1423 in 1950. See *Lorillard v. Pons*, 434 U.S. 575, 581, 98 S.Ct. 866, 55 L.Ed.2d 40 (1978) (holding that, "where ... Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the

Following the principles recognized in *Bordallo*, the Guam Supreme Court concluded that the Guam Legislature had not adequately "designate[d] an officer to receive messages from the Governor" nor "provide[d] for the receipt, filing, routing, and safekeeping of such messages as might be delivered to the Legislature." *Pangelinan*, 2000 WL 263216, at *3-4, 5-6. We agree.

When the Guam Legislature adjourned on February 7, 1998, the Guam Code specifically authorized the Legislative Secretary to receive messages from the Governor during some legislative recesses. In contrast, it did not provide similar authorization during an adjournment of the Legislature. 2 Guam Code Ann. § 1118(b) & (c) (1998).

The Legislature's standing rules provide no firmer ground for the Governor's argument. During the legislative session in question, the standing rules did provide generally that "[a]ll communications, petitions and messages addressed to the Legislature shall be delivered to the Legislative Secretary, who shall transmit them to the Committee on Rules for proper disposition." 24th Guam Legislature Standing Rule § 4.07. But, as the Guam Supreme Court explained, it is not clear whether this rule of general applicability authorizes receipt of messages from the Governor while the Guam Legislature is in adjournment. Even if Rule § 4.07 were read to designate a specific agent for receipt of messages from the Governor during adjournments, it fails to provide the detailed procedures for safekeeping that we identified in *Bordallo*. Such an ambiguous grant of authority does not satisfy *Bordallo*'s requirements.

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interpretation given to the incorporated law, at least insofar as it affects the new statute").

As the Guam Supreme Court concluded, the Guam Legislature has not identified any legitimate interest that is served by its failure to provide clearly proscribed procedures, and their absence raises the very concerns that the pocket veto provisions in Guam's Organic Act were intended to avoid:

> The Legislature could have easily chosen to amend its Standing Rules to provide for return procedures, ... yet it did not. Such procedures are important in order to effect orderly government and better serve the people of Guam. If there is uncertainty regarding the delivery of bills back to the Legislature or if bills are not properly recorded and preserved, the Legislature cannot act swiftly to override a veto, if necessary, or perhaps enact further legislation that would be dependent upon any prior enactment. *549 Both the Executive and the Legislative Branches should be certain and aware, in a timely manner, of the status of legislation at all times within the enactment process. More extensive procedures surrounding delivery to the Legislature, when adjourned, are needed to ensure that.

Pangelinan, 2000 WL 263216, at *6; cf. *The Pocket Veto Case*, 279 U.S. at 684-85, 49 S.Ct. 463 (holding that the safeguards of the federal pocket veto clause are intended to "giv[e] public, certain and prompt knowledge as to the status of [a] bill" and "enable Congress to proceed immediately with its reconsideration"); see also *Wright*, 302 U.S. at 590, 594-95, 58 S.Ct. 395 (same; holding that federal pocket veto clause should be interpreted so as not to place any "artificial formalit[ies]" in the way of Congress's reconsideration of bills).

Because the Guam Legislature failed to provide adequate return procedures, it "prevent[ed] ... return" of Bill 495. Thus, the Governor's inaction resulted in a pocket veto.

2. Ratification

Finally, Defendants assert that, even if there were a pocket veto of Bill 495, "the legislature recognized the validity" of the bill by referencing it in subsequent laws, thereby ratifying it.

This argument lacks merit. It is true that when a bill fails to pass into law or a law is later invalidated or repealed, under certain circumstances, the bill or law may be given new legal force by subsequent, duly enacted laws. This can occur when the subsequent laws manifest an intent to enact the failed bill or reenact the invalidated or repealed law. See, e.g., 1A Sutherland Statutory Construction, Amendatory Acts and Unconstitutional Statutes § 22.04, at 182-83 (5th ed. 1993) (question is one of the "intent of the legislature").

Nothing in the cited statutes indicates that the Legislature intended to incorporate failed Bill 495 by reference in the subsequently enacted laws. To the contrary, the subsequently enacted statutes suggest that the Legislature erroneously assumed that Bill 495 had lapsed into law without the Governor's signature.

Moreover, Public Law 24-272, adopted October 2, 1998, "repealed and reenacted" the solid waste management provisions of Bill 495. The reenacted provisions stand on their own as duly-enacted sections of Public Law 24- 272. However, Public Law 24-272 did not, merely by reference, inject new life into Bill 495

after the bill was invalidated by the Governor's pocket veto. The subsequent law could not resurrect Bill 495 in its entirety by reenacting a part.

III. *Conclusion*

We conclude that the petition presents a justiciable case or controversy that confers standing on the Governor. On the merits, we affirm the Guam Supreme Court's decision that, under the circumstances of this case, the Legislature's failure to adopt adequate procedures for the return of a bill resulted in a pocket veto of Bill 495. We further conclude that Bill 495 was not subsequently ratified.

AFFIRMED.

IN THE SUPERIOR COURT OF GUAM

VICENTE C. PANGELINAN, Senator, and JOSEPH C. WESLEY, Mayor, on Behalf of themselves and all those similarly situated,	SPECIAL PROCEEDING CASE NO. SP00073-98
Plaintiffs-Appellants,	**DECISION AND ORDER**
vs.	
CARL T.C. GUTIERREZ, Governor, Y'ASELA A. PEREIRA, Treasurer, the GOVERNMENT OF GUAM, And DOES 1 THROUGH 10	

I. INTRODUCTION

This case involves a complaint for preliminary injunction and declaratory relief regarding the passage of Public Law 24-139. Plaintiffs moved for a consolidation of the hearing for a preliminary injunction with the trial on the merits for the permanent injunction. At the hearing, the parties agreed to stipulate to the admissibility of all documents and treat the hearing as a trial on the merits. Thus this decision and order constitutes the Court's final decision on the issues, including the issues raised in the parties motions, as detailed below.

Thus the trial came before the Court on May 4, 1999, the Honorable Judge Steven S. Unpingco presiding. Michael Phillips appeared on behalf of Plaintiffs Senator Vincente Pangelinan and Mayor Joseph Wesley. Eric Heisel appeared for the Attorney General's office on behalf of Defendants Governor Carl Gutierrez and Treasurer Y'asela Pereira of the Government of Guam. Peter Sgro represented Defendants-in-Intervention Mayors' Council of Guam.

II BACKGROUND

Senator Vincente Pangelinan ("Senator Pangelinan") was a member of the Twenty-Fourth Guam Legislature. Mayor Joseph Wesley ("Mayor Wesley") is the Mayor of Santa Rita. On February 7, 1998 the Legislature passed Substitute Bill No. 495 ("Bill 495"). Bill 495, now designated as Public Law No. 24-139 ("P.L. 24-139") which permitted the operation of an incinerator, updated Guam's Solid Waste Management Plan ("the Plan"), and removed the administrative authority of the Supreme Court of Guam over the Superior Court of Guam. At the end of that same day, the Speaker of the Legislature, Antonio R. Unpingco declared the Legislature "adjourned." Before adjourning the Legislature failed to authorize the Legislative Secretary or anyone else to receive messages from the Governor during the adjournment.

Bill 495 was officially presented to the Governor on February 10, 1998. On February 22, 1998 the Governor wrote a letter to Speaker Unpingco explaining why the Governor failed to sign or veto Bill 495. Attached to the letter was a copy of Bill 495 which did not contain the Governor's signature, but did indicate that "Because immediate action on solid waste management is a basic

necessity for life, I allowed Substitute Bill No. 495 to go into law without benefit of the Signature of the Governor." The Legislature did not receive the Governor's letter until February 23, 1998, more than 10 days after the Legislature presented Bill 495 to the Governor and the Legislature did not reconvene until February 26, 1998, nineteen (19) days after adjourning.

Plaintiffs claim the Organic Act of Guam requires the Governor to sign the bill; that the Governor cannot merely allow the bill to become law by virtue of having taken no action within 10 days under these facts. Plaintiffs point to §1423i of the Organic Act, which provides in part:

> Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, **unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law.**

(Emphasis added.) Thus plaintiffs claim that due to the Legislature's failure to designate anyone to receive messages from the Governor during the adjournment, such omission effectively prevented the Governor from returning the bill during the adjournment. Absent the actual designation of an agent to receive messages during the adjournment, Plaintiffs argue that P.L. 24-139 never became law because of the "pocket veto" provision of §1423i and should be declared invalid.

Plaintiffs filed a Complaint for Declaratory and Injunctive Relief, followed by a Motion for Preliminary Injunction and Consolidation of the Hearing with the Trial on the Merits. The Attorney General, representing Governor Gutierrez ("the Governor") and Y'asela A. Pereira, the Treasurer of Guam, filed an Opposition to Plaintiffs' Motion for a Preliminary Injunction,
and on January 13, 1999, a Motion to Dismiss under Rule 12(b)(6).

On April 28, 1998 the Mayor's Council of Guam ("the Mayors' Council") joined the fray, moving ex parte to intervene under GRCP 24. The Mayors' Council also answered and on January 13, 1999, filed a Motion to Dismiss.

II ISSUES

II Do Plaintiffs Have Standing As Taxpayers?

1. Is Plaintiffs Case Moot?

II Did The Legislature's Adjournment Prevent The Governor From Returning Bill 495?

II ANALYSIS

The Court has jurisdiction over this matter pursuant to §1424-1 of the Organic Act of Guam, 7 GCA §§ 3105, 20302, and Rules 57 and 65 of the Guam Rules of Civil Procedure.

(c) **AG's Motion to Dismiss.**

The issues contained in the AG's motion to dismiss were treated the same as Plaintiffs' motion for a Preliminary Injunction and Declaratory relief, as trial issues and not as motions. The Court refers to the motions which raises these issues only for simplicity of reference, and not for the legal standards under a Rule 12(b)(6) motion to dismiss, for example.

The AG moved to dismiss based on two grounds. First, the AG claims that the issue of the validity of P.L. 24-139 is moot since the Legislature and Governor have ratified the law via the amendments in Bill 525 (P.L. 24-166). Additionally, sections 2 through 16 of P.L. 24-139, dealing with the solid waste management plan and any potential incinerator, were repealed and reenacted under Bill No. 520 (P.L. 24-272). Second, the AG argues that Senator Pangelinan and Mayor Wesley have suffered no concrete injury from the passage of P.L. 24-139 and therefore have no standing.

(c) **Standing and Mootness.**

Senator Pangelinan claims injury as a senator from the passage of P.L. 24-139, arguing that the bill's illegal passage constitutes a violation of separations of power principles by denying him his right to effectively participate in a co-equal branch of government exercising the authorizing checks and balances against the Executive branch. As a taxpayer and Guam resident, Senator Pangelinan also argues that he has been injured in that he has been denied the right to government guaranteed by the Organic Act.

Mayor Wesley claims injury as a result of the construction of an incinerator in close proximity to his residence and the residences of his constituency. As a taxpayer and Guam resident, Mayor Wesley also claims he

has been denied the right to government guaranteed by the Organic Act.

Unlike federal courts, state courts are not bound by constitutional strictures on standing. In state courts standing is a self-imposed rule of restraint. Hawkeye Bancorporation v. Iowa College Aid Com., 360 N.W.2d (Iowa 1985). The policy behind state court standing requirements is that the judicial power to resolve public disputes in the context of separation of powers concerns should be limited to those questions capable of judicial resolution and presented in an adversary context. See Life of the Land v. Land Use Com., 63 Hawaii 166, 623 P.2d 431 (1981) . Standing in the state courts is a judge-made doctrine used to refuse to address the merits of a controversy because the party advancing it is not properly situated to prosecute the action. Knierim v. Leatherwood, 542 S.W.2d 806 (TE 1976). One court has summarized the purpose of the doctrine as a protection against improper plaintiffs. State ex rel. Thomson v. State Board of Parole, 342 A.2d 634 (NH 1975). Injury-in-fact is the test for standing absent a discernible legislative intent to the contrary. Snyder's Drug Stores, Inc. v. Minnesota State Board of Pharmacy, 221 N.W.2d 162 (MN 1974).

In 5 GCA § 7103 the Guam Legislature expressly provided Guam taxpayers standing and essentially defines injury-in-fact for certain causes of action relating to the spending of government funds. Section 7013 provides in its entirety:

> **§ 7103. Taxpayer Standing to Sue.**
>
> Any taxpayer who is a resident of Guam shall have standing to sue the government of Guam and any officer, agent, contractor, or employee of the Executive Branch of the government of Guam for

> the purpose of enjoining any officer, agent, contractor, or employee of the Executive Branch of the government of Guam from expending money without proper appropriation, without proper authority, illegally, or contrary to law, and to obtain a personal judgment in the courts of Guam against such officers, agents, contractors, or employees of the government of Guam and in favor of the Government of Guam for the return to the Government of Guam of any money which has been expended without proper appropriation, without proper authority, illegally, or contrary to law. For purposes of this Chapter, the Governor and Lt. Governor of Guam are officers of the government of Guam, and are included within the scope of this Chapter.

The AG argues that no money was ever spent under P.L. 24-139, and thus Plaintffs have suffered no injury that would allow them to sue as taxpayers. The portion of the P.L. 24-139 dealing with the Guam's Solid Waste Management Plan was later repealed and reenacted under another public law, which basically forecloses the possibility that any money will be spent under the law, according to the AG. The only portion that remains is that portion which allocates the administrative authority between the Superior and Supreme Courts of Guam.

The Court finds that the allocation of administrative authority in the judicial system satisfies the injury requirement of illicit spending under §7103. The allocation of administrative power under P.L. 24-139 is essentially an allocation of control over the rules and policies governing "personnel, procurement, finance and travel." P.L.24-139, Section 25. Such control affects the spending and appropriations of money, which if P.L. 24-139 is found to

be inorganic, would result in expenditures of money "without proper appropriation, without proper authority, illegally, or contrary to law." Thus Plaintiffs Senator Pangelinan and Mayor Wesley have standing under the §7103 to sue for declaratory and injunctive relief.

Similarly, Plaintiffs' causes of action are not moot. The AG had also argued that based on the repeal and re-enactment of the Solid Waste Plan sections of P.L.24-139, the law was ratified by the validly passed P.L. 24-272. This argument must fail for the same reason: the portions of P.L. 24-139 dealing with the administration of the Courts remain in effect, and if found to be inorganic, would constitute an injury-in-fact to Plaintiffs. The Court therefore finds that Plaintiffs' claims are not moot.

B. The Governor Was Not Prevented From Returning Bill 495.

1. Under Federal Caselaw, The Return of Bills To Appropriate Legislative Agents is Permissible.

As stated earlier, the Court's ultimate inquiry involves the interpretation of §1423i of the Organic Act[1] **and the question of** whether the Governor was prevented from returning Bill 495 by virtue of the Legislature's adjournment. Under the Organic Act, much like the U.S. Constitution, a bill passed by the Legislature may become law without the Governor's signature in certain situations. Under §1423i, if

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[1] The "pocket veto" clause of the Organic Act is nearly identical to that of Article 1, Section 7, clause 2 of the U.S. Constitution:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he s ll return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

the Governor wishes to veto a bill, under normal circumstance he must "return it, with his objections, to the legislature within 10 days (Sundays excepted) after it shall have been presented to him." The provision in §1423i contested here governs those situations where the Legislature adjourns before the Governor has returned the bill, and remains adjourned at the end of the 10 day period.

> If he does not return it within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law.

Plaintiffs contend that due to the Legislature's adjournment on February 7, 1998, the same day that it passed Bill 495, and the Legislature's failure to authorize anyone to receive the Governor's potential return of Bill 495, the bill's return was prevented by adjournment. Once the bill's return was prevented by adjournment, the Governor was required to actually sign the bill within 30 days in order for it to become a law. Since the Governor failed to do so, Plaintiffs urge this Court to invalidate P.L. 24-139.

The Court recognizes that the Governor in no way claims that he was prevented from returning the bill. To the contrary, throughout this litigation the AG argues on his behalf that the Legislature has in fact provided for the return of bills while recessed or adjourned.

Neither party contends that the Legislature actually designated the Legislative Secretary, or anyone else to receive bills from the Governor before adjourning on February 7, 1998. While both parties agree that in some instances the Legislature has provided for the receipt of bills

by the Governor when the Legislature is not in session, the parties disagree as to whether such provision was effective in this case. The statute at issue, 2 GCA § 1118 provides in part:

> (b) At any time when the Legislature is in recess or has adjourned and could be in session but for such recess or adjournment, either the Speaker or the Committee on Rules may summon the Legislature to meet for whatever period of time the Legislature shall deem required. A meeting called pursuant to this paragraph shall be a continuation of the regular session last convened pursuant to Paragraph (a) of this Section.
>
> (c) At any time when the Legislature is in recess the Legislative Secretary is empowered to and shall receive any messages or communications of any kind addressed to the Legislature from the Governor. For purposes of this Paragraph receipt of messages or communications of any kind from the Governor to the Legislature shall occur if delivered to the Legislative Secretary or to the Office of the Legislative Secretary.

Plaintiffs contend that the plain language of the statute indicates an intent by the Legislature to empower the Legislative Secretary to receive bills on the Legislature's behalf, only when the Legislature is in recess, as provided for in subsection (c). In contrast, subsection (b) allows the Speaker or the Committee on Rules to reconvene the Legislature whether it be recessed or adjourned. The only way that anyone could receive messages from the Governor on behalf of the Legislature during an adjournment, Plaintiffs claim, is if the Legislature had authorized the Legislative Secretary to receive messages before adjourning, in accordance with the Legislature's Standing Rules. Section

4.07 of the Standing Rules for the 24th Legislature provides in part:

> **Delivery of Communications.**
>
> **Section 4.07.** All communications, petitions and messages addressed to *I Liheslaturan Guahan* shall be delivered to the Speaker, who shall transmit them to the Legislative Secretary for record keeping and to the Committee on Rules for proper disposition. The Legislative Secretary shall be designated to receive all bills transmitted to *I Maga'lahen Guahan* and being returned pursuant to the Guam Organic Act, 48 U.S.C. §1423i, *Approval of Bills,* whether *I Liheslaturan Guahan* is in Session, Recessed or has Adjourned.

Here, Plaintiffs point out that on February 7, 1998, the Legislature adjourned as opposed to recessing, and failed to designate anyone to receive messages from the Governor. Plaintiffs then argue that with no one so designated, and the Legislature having adjourned, §1118(c) does not apply and no one was empowered to receive messages. The Governor was prevented by the Legislature's adjournment from returning Bill 495. The fact that the Governor made no attempt nor evidenced any intent to return the bill with his objections, and even went so far as to indicate that he was allowing the bill to pass into law without his signature is irrelevant. Once the Legislature prevented the bill's return, the Governor's only valid method for passing the bill was to sign it, as mandated by §1423i of the Organic Act, and this he failed to do, under Plaintiffs' reading of the law.

Though the interpretation of §1423i involves the application of other Guam statutes and the Legislature's Standing Rules, the ultimate issue depends upon the Court's

interpretation of §1423i. Where a provision of the Organic Act is similar to a provision of the U.S. Constitution, federal authorities construing the constitutional provision are persuasive. See Sumitomo v. Zhong Ye, 1997 WL 471506 (January 29, 1997). Thus an analysis of §1423i begins with the U.S. Supreme Court, which has twice examined the constitutional pocket veto counterpart in The Pocket Veto Case, 279 U.S. 655 (1929) and in Wright v. United States, 302 U.S. 583 (1938).

In The Pocket Veto Case, Congress adjourned intrasession for a 5 month period. Less than ten days before adjourning, a bill originating in the Senate was presented to the President. The President neither signed the bill nor returned it to the Senate, and the Court held that this Presidential exercise of the pocket veto power was valid. While the facts differed from the instant case, the larger issue was the same: if the adjournment did not prevent the President from returning the bill within the prescribed time, it became a law without his signature; but if the adjournment prevented him from so doing, it did not become a law. Id. at 674. Additionally the Court explained the constitutional rights to be protected whenever a bill is passed into law: 1) the President should have the full time required by the Constitution for deciding whether to approve or disapprove of the bill, and to formulate his objections for Congress; and 2) the Congress should have the opportunity to override his veto, should he chose to exercise that power. Id. at 678.

In 1929 the Supreme Court took a very strict approach to the interpretation of the pocket veto clause, holding that the President must return a vetoed bill to a House in session as an organized body, not to any individual agent. The Court reasoned that even if Congress had enacted a statute authorizing an agent to receive bills

while adjourned, which it had not, the Constitution would still forbid such delivery. Id. at 683-84. This prohibition against delivery to Legislative agents while adjourned was based on the fear that such a return might result in a long delay in the final disposition of the bill attended by public uncertainty as to its status. Id. at 684-85.

Less than 10 years after The Pocket Veto Case the Supreme Court revisited similar issues in Wright v. United States, 302 U.S. 583 (1938) and loosened its approach considerably. In so doing the Court created an exception to The Pocket Veto Case by holding that the return of bills to the Congress, may in certain circumstances be accomplished by delivery to an appropriate agent in the originating house. In Wright, a bill was passed by both Houses, and sent to the President. Before the end of the 10 day period, the Senate, where the bill had originated, recessed for three days while the House of Representatives remained in session. The President returned the bill with his objections to the Secretary of the Senate, while the Senate was still in recess. The Secretary of the Senate stated that he had accepted the bill in the Senate's absence, "in order to protect the interests of the Senate, so that it might have the opportunity to reconsider the bills." Id. at 586, fn. 1.

Of considerable importance was the Court's observation that

> In returning the bill to the Senate by delivery to its Secretary during the recess there was no violation of any express requirement of the Constitution. The Constitution does not define what shall constitute a return of a bill or deny the use of appropriate agencies in effecting the return.

Id. at 589. Thus the Court progressed from the holding in The Pocket Veto Case that required delivery to a House in

session as an organized body. The thrust of article 1, section 7, clause 2 is to protect the executive's right to consider a bill, and the legislature's right to override a veto, and the Constitution does not expressly prescribe how this should be done, much as the Organic Act places no such restrictions on the Governor or Legislature. The Court in adopting a broader interpretation of the delivery or return of bills thus allowed for the evolving realities of law-making, while protecting constitutional rights. By that same established principle does this Court guide itself. That is, the focus of Plaintiffs' claim is whether there was a violation of the Organic Act, specifically, was the return of the bill prevented by adjournment.

> There is no greater difficulty in returning a bill to one of the two Houses when it is in recess during the session of Congress than in presenting a bill the President by sending it to the White House in his temporary absence. Such a presentation is familiar practice. The bill is sent by a messenger and is received by the President. It is returned by a messenger, and why may it not be received by the accredited agent of the legislative body? To say that the President cannot return a bill when the House in which it originated is in recess during the session of Congress, and thus afford an opportunity for the passing of the bill over the President's objections, is to ignore the plainest practical considerations and by implying a requirement of an artificial formality to erect a barrier to the exercise of a constitutional right.

Id. at 589-90. The Court explained that the dangers envisioned in The Pocket Veto Case "appear to be illusor[y] when there is a mere temporary recess." Id. at [illegible] Ultimately the Court found that there was no "p[illegible] difficulty in making the return of the bill during the recess." Id. at 438-9. While the Court specifically limited its

holding to the 3-day recess that occurred in that case, it left open the possibility of the same conclusion where the recess or adjournment was longer.

> We are not impressed by the argument that while a recess of one House is limited to three days without the consent of the other House, cases may arise in which the other House consents to an adjournment and a long period of adjournment may result. We have no such case before us, and we are not called upon the conjecture as to the nature of the action which might be taken by the Congress in such case, or what would be its effect.

Id. at 598.

The Circuit Court of Appeals for the D.C. Circuit subsequently addressed the pocket veto provision of the Constitution in Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974). In Kennedy a Senator sought a declaratory judgment that an act became law without the President's signature, and that the purported pocket veto was not effective. The Circuit Court held that the Senate had authorized the Secretary of the Senate to receive messages from the President during adjournment, and that the recess did not prevent the return of the bill. The Court reiterated the principle that the pocket veto power was designed to enforce respect on the part of the legislature and the executive for the other's law-making authority, specifically the time periods allotted in which to consider and return bills, and to override the executive's veto.

> We should not adopt a construction which would frustrate either of these purposes. Wright v. United States, 302 U.S. 583, 596, 58 S.Ct. 395, 400, 82 L.Ed. 439 (1938). Where possible, then, the pocket veto clause should be construed in a manner which preserves both purposes. **Since a pocket veto always has the effect of frustrating Congress'**

> **right to reconsider a vetoed bill,[footnote omitted] the preferred construction of the clause is that return of a bill was not 'prevented' by an adjournment.**

Id. at 438 (emphasis added).

The Kennedy court discussed at some length the fears first raised in The Pocket Veto Case, and subsequently in Wright, regarding public uncertainty about a bill, and the possibility of its ending up in a state of suspended animation, when a bill is returned to the legislature during an adjournment. The Court considered the actual lengths of Congressional adjournments over the years, and concluded that public uncertainty and the possibility of lingering bills was simply less of an issue, given modern methods of communication and a re-evaluation of the concerns in The Pocket Veto Case.

> Plainly, intrasession adjournments of Congress have virtually never occasioned interruptions of the magnitude considered in the Pocket Veto Case.[footnote omitted] **More importantly, return of a bill during an intrasession adjournment, whatever its length, can no longer cause the public uncertainty envisioned in the Pocket Veto Case.** Modern methods of communication make it possible for the return of a disapproved bill to an appropriate officer of the originating House to be accomplished as a matter of public record accessible to every citizen. The status of such a bill would be clear; it has failed to receive presidential approval but may yet become law if Congress, upon resumption of its deliberations, passes the bill again by a two-thirds majority. **This state of affairs generates no more public uncertainty than does the return of a disapproved bill while Congress is in actual session.** [footnote omitted] The only

> possible uncertainty about this situation arises from the absence of a definitive ruling as to whether an intrasession adjournment 'prevents' the return of a vetoed bill. Hopefully, our present opinion eliminates that ambiguity.

Id. at 441. In an important footnote the Court stated that

> The length of an intrasession adjournment per se does not prevent the return of a disapproved bill for reconsideration. The Constitution sets no time limit on the right of Congress to override a presidential veto.

Id. at fn. 36. The Court concluded by noting that in the only case presented to the Supreme Court involving an intrasession adjournment, the Wright case, the Supreme Court found that return was not prevented. Id. at 442. Thus the fact that the adjournment of the 24th Guam Legislature lasted 19 days, as opposed to the 3 day recess in Wright or the 5 day recess in Kennedy is of little consequence, and does not distinguish this case from Kennedy.

In Bordallo v. Camacho 416 F.Supp. 83 (1973) the Guam District Court interpreted Guam's pocket veto provision of the Organic Act, §1423i, and found that where the Legislature did not provide for the authorization of an appropriate agent for receiving messages from the Governor during a recess or adjournment, the Governor was prevented from returning a bill. "[In] the instant case, the Court is not presented with the situation where the Legislature authorized an agent to receive messages from the Governor." Id. at 90. The District Court continued to state that "The Governor is prevented from returning a Bill to the Legislature when he cannot return it to the Legislature in session." Id.

The Guam District Court opinion in Bordallo was rendered in 1973, prior to the D.C. Circuit's opinion in the Kennedy case, which was issued in 1974. By the time the

Ninth Circuit heard Bordallo on appeal in 1975, the Ninth Circuit had availed itself of the ruling in Kennedy. In a very brief ruling, the Circuit Court cited only the Kennedy case in affirming the District Court. The Ninth Circuit relied on that portion of Kennedy which stated that an

> 'intra-session adjournment of Congress does not prevent the President from returning a bill which he disapproves so long as appropriate arrangements are made for the receipt of presidential messages during the adjournment'. . . . Considering the failure of the Guam Legislature to make the kind of provision for interim messages contemplated in Kennedy v. Sampson, and in view of the ease with which the Guam Legislature could have made such provision if it thought the prospect of a pocket veto to be undesirable, the district court correctly concluded that the Governor was free to take advantage of the legislative hiatus and exercise the pocket veto.

Id. at 764-65.

Both the District Court and the Ninth Circuit Court in the Bordallo opinions were decided in the absence of any Guam statutory law or Legislative Standing Rules authorizing an agent to receive returned bills from the Governor when the Legislature was recessed or adjourned. However, in 1976, about one year after the Ninth Circuit opinion, the Guam Legislature did pass legislation in order to address these issues: the previously mentioned §1118, Title 2 of the Guam Code Annotated.

The crucial distinction between the Bordallo cases and the instant case is the fact that currently the Guam Legislature has provided for the return of bills while recessed or adjourned. Consequently, the major concern of this Court is whether under §1118 the Legislature authorized an

appropriate agent for the return of bills when they adjourned on February 7, 1998.

(c) There Is No Difference Of Consequence Between A Recess And An Adjournment, Under 2 GCA §1118.

Neither party contends that the Legislature actually designated the Legislative Secretary, or anyone else to receive bills from the Governor before adjourning on February 7, 1998. While both parties agree that in some instances the Legislature provided for the receipt of bills by the Governor when the Legislature is not in session, the parties disagree as to whether such provision was effective in this case. As noted earlier, the statute at issue, 2 GCA § 1118 provides in part:

> (b) At any time when the Legislature is in recess or has adjourned and could be in session but for such recess or adjournment, either the Speaker or the Committee on Rules may summon the Legislature to meet for whatever period of time the Legislature shall deem required. A meeting called pursuant to this paragraph shall be a continuation of the regular session last convened pursuant to Paragraph (a) of this Section.
>
> (c) At any time when the Legislature is in recess the Legislative Secretary is empowered to and shall receive any messages or communications of any kind addressed to the Legislature from the Governor. For purposes of this Paragraph receipt of messages or communications of any kind from the Governor to the Legislature shall occur if delivered to the Legislative Secretary or to the Office of the Legislative Secretary.

Additionally, §4.07 of the Standing Rules for the 24th Legislature provides in part:

> **Delivery of Communications.**
> **Section 4.07.** All communications, petitions and messages addressed to *I Liheslaturan Guahan* shall be delivered to the Speaker, who shall transmit them to the Legislative Secretary for record keeping and to the Committee on Rules fo rproper disposition. The Legislative Secretary shall be designated to receive all bills transmitted to *I Maga'lahen Guahan* and being returned pursuant to the Guam Organic Act, 48 U.S.C. §1423i, *Approval of Bills,* whether *I Liheslaturan Guahan* is in Session, Recessed or has Adjourned.

Here, on February 7, 1998, the Legislature "adjourned" as opposed to "recessing," according the Legislature's Daily Journal, and failed to designate anyone to receive messages from the Governor. This failure to designate the Secretary prevented the Governor from returning Bill 495, Plaintiffs claim. Also, according to the Affidavit of Senator Pangelinan, "During the Legislature's last session, we authorized the speaker to receive all messages and correspondence from the Governor during our adjournment. This motion was passed immediately prior to our adjournment." Affidavit of Senator Pangelinan, ¶ 9. This further supports Plaintiffs' argument that the Legislature was familiar with the procedures necessary to receive messages during adjournment, and that the Legislature simply failed to follow such procedures during the adjournment of February 7 to February 26.

The AG argues that the distinction between legislative recesses and adjournments have faded over the years to the point where no substantive difference exists

between the two. Plaintiffs counter that plain language of §1118 indicates that the Guam Legislature intended a distinction.

In cases involving statutory construction, the starting point of a court's analysis must be the language employed by the Legislature. American Tobacco Co. v. Patterson, 456 U.S. 63, 102 S.Ct. 1534, 71 L.Ed.2d 748 (1982). This is because of the presumption that the legislative purpose is expressed by the ordinary meaning of the words used. Id. Since the exact difference between an adjournment and a recess is not apparent to this Court, the Court begins by examining legal dictionary definitions of the terms. According to Barron's Law Dictionary, a "recess" refers to

> the intermission between sittings of the same [legislative] body at its regular or adjourned session, and not . . . the interval between the final adjournment of one body and the convening of another at the next regular session. . . . A temporary dismissal and not an adjournment **sine die**. 74 S.W. 298.

Barron's Law Dictionary, 3d Ed., 1991. The "adjournment" of the Legislature from February 7 to February 26 arguably might also be called a recess under this definition, since it was between sittings of the same legislative body, and not between the 24th and 25th Legislatures. However, an adjournment sine die refers to an adjournment where the legislature does not specify a date of return, id., and so the Legislature's break here might also be termed an adjournment sine die. Turning to the definition of "adjourn" the Court finds that

> The term has a special meaning in the rule of legislatures that adjourn between legislative sessions, but recess for periods, of whatever duration, within a single session.

Id.

Again, the terms are used almost interchangeably, with the only distinction occurring when the break is intersession, as opposed to intrasession. The one point of agreement between the parties regarding the Legislaure's break, is that the break in question was an intrasession break. According to Black's Law Dictionary, 6th Ed. 1990,

> **Recess**. . . . In legislative practice, the interval occurring in consequence of an adjournment, between the sessions of the same continuous legislative body; not the interval between the final adjournment of one body and the convening of another at the next regular session.
>
> **Adjourn**. To put off; defer; recess; postpone. To postpone action of a convened court or legislative body until another time specified, or indefinitely; the latter being usually called to adjourn *sine die*. To suspend or recess during a meeting, legislature or assembly, which continues in session. Suspending business for a time; delaying.

Thus the Court finds little in the way of "plain meaning" that would allow it to go no further in the analysis. Plaintiffs offer that the controlling definitions regarding adjournment and recess lie in the Standing Rules of the 24th Legislature. In the Standing Rules the Legislature adopts Mason's Manual of Legislative Procedure, which provides a general distinction between the two:

Distinction Between Adjournment and Recess

> (c) The basic distinction between adjournment and a recess is that an adjournment terminates a meeting, while a recess is only an interruption

or break in a meeting. After an adjournment a meeting begins with the procedure of opening a new meeting. After a recess the business or procedure of a meeting takes at the point it was interrupted.

2. Breaks in the meetings of a day, as for meals, are usually recesses, but termination of meetings until a later day are adjournments.

Chapter 21, §214 of Mason's Manual of Legislative Procedure.

This argument has some appeal in that the Legislature may well impart to its breaks, whether they be called adjournments or recesses, the meanings contained within their Standing Rules. However, interpretations of §1423i of the Organic Act and 2 GCA § 1118 are not controlled by the definitions in the Legislature's Standing Rules or Mason's Manual of Legislative Procedure. The Standing Rules of the 24th Guam Legislature may or may not have been the same as the Standing Rules of the Legislature in 1976, which is the year §1118 was enacted. Being unable to ascertain that information, the Court is not persuaded that the Standing Rules of the 24th Legislature should control the definition of statutory terms created over 20 years ago.

Looking back to the date of its passage into law, subsections (b) and (c) of 2 GCA §1118 were added to the former Government Code §1015 under P.L. 13-149 on June 26, 1976, in response to the Bordallo v Camacho decision. While the legislative history behind the statute's passage is practically non-existent, its proximity to the Bordallo decision, about 1 year after the Ninth Circuit ruling, is a powerful indication that the statute was an attempt by the Guam Legislature to deal with the problems of the pocket

veto, as enunciated in the 9th Circuit and prior Supreme Court rulings. Thus the Court examines the federal caselaw to determine the meaning of the terms.

In the context of an executive's exercise of his pocket veto, a blurring of the meanings of recesses and adjournments has occurred in the law since at least 1938. The legal distinction between the terms, in the context of these pocket veto clauses, does not turn on the "termination" versus an "interruption or break" as defined in Mason's. The U.S. Supreme Court, in fact, has used the terms interchangeably.

> Paragraph 4 of section 5 of article 1 provides: 'Neither House, during the Session of Congress, shall, without the Consent of the other, *adjourn* for more than three days, not to any other Place than that in which the two Houses shall be sitting.' It will be observed that this provision is for a short *recess* by one House without the consent of the other 'during the Session of Congress.' Plainly the taking of such a recess is not an adjournment by the Congress. The 'Session of Congress' continues.

Wright 302 U.S. at 589 (emphasis added).

Nor does the length of time generally appear to be controlling in distinguishing the two. See Wright, 302 U.S. at 585 (Senate found to have taken a three day recess); Kennedy, 511 F.2d at 439-440 ("Wright involved an adjournment of only three days, a shorter period than the five day adjournment at issue in this case," then "only the Senate had adjourned in [Wright] whereas both Houses were in recess [in this case].") The lack of a meaningful distinction between the terms could not be more clear than in the decision by the Guam District Court. In Bordallo v. Camacho the Legislature was described as having "adjourned for a recess" of almost six weeks (41 days).

Bordallo, 416 F.Supp. at 84. The Court acknowledges that the analysis in that case did not turn on a technical interpretation of whether the break constituted a recess or an adjournment, since §1118 had not yet been enacted. However, the Court also notes that the break in that case, 41 days, was considerably longer than the 19 day break here, yet not significant in the District Court's analysis. The length or designation of any particular break is not as significant as the simple question of whether the executive was actually prevented by virtue of the Legislature's adjournment from returning a bill.

> We think that under the constitutional provision the determinative question in reference to an 'adjournment' is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that 'prevents' the President from returning the bill to the House in which it originated within the time allowed."

Pocket Veto Case, 279 U.S. at 680.

Indeed, almost without exception, in analyzing pocket veto cases, the analysis turns not on semantic considerations of whether the break constituted a "recess" or an "adjournment," but whether the executive in question was *in fact* prevented by adjournment from returning a bill. See e.g., Kennedy, 511 F.2d at 440 (the reviewing court should not "embrace ritual at the expense of logic"); Wright v. United States, 302 U.S. at 589-90 ("To say that the President cannot return a bill when the House in which it originated is in recess during the session of Congress, and thus afford an opportunity for the passing of the bill over the President's objections, is to ignore the plainest practical considerations and by implying a requirement of an artificial formality to erect a barrier to the exercise of a constitutional right"). Federal jurisprudence is in line then,

with the common definitions of the terms in that there is little distinction between the two terms modernly. Within the context of the pocket veto clause, the terms "recess" and "adjournment" may be used interchangeably.

Based upon this conclusion, the Court also finds that under 2 GCA §1118(c) the Legislative Secretary was empowered to receive any messages addressed to the Legislature from the Governor, regardless of whether the Legislature closed their meeting by adjourning or recessing. The Secretary having been empowered by statute to receive such messages, Bill 495's return was not prevented by adjournment.

3. Under The Standing Rules of the 24th Guam Legislature, the Legislative Secretary was Authorized to Receive Messages From the Governor.

As discussed earlier, §4.07 of the Standing Rules for the 24th Legislature states that "The Legislative Secretary shall be designated to receive all bills transmitted to the *I Maga'lahen Guanan* and being returned pursuant to the Guam Organic Act, 48 U.S.C. §1423i, *Approval of Bills*, whether *I Liheslaturan Guahan* is in Session, Recessed or has Adjourned." This section is also susceptible to two readings. The first is that the statement is a command, whereby the Legislature must perform the affirmative act of designating the Legislative Secretary to receive messages. The second, is that by virtue of §4.07, the Legislative Secretary has been designated to receive such messages. This Court finds that under §4.07 of the Standing Rules of the 24th Guam Legislature, the Legislative Secretary is designated to receive messages whether the

Legislature "is in Session, Recessed or has Adjourned."

This reading of §4.07 harmonizes the Standing Rules and 2 GCA §1118. Since the exact enactment date of §4.07 cannot be ascertained by this Court, it is impossible to know whether these two sections were codified at the same time. But, as stated earlier, they are both clearly in response to the Bordallo v. Camacho decision. Thus the Court believes that a harmonious reading of these provisions is necessary.

> When a legislature enacts a provision, it has available all the other provision relating to the same subject matter whether in the same statute or in a separate act. Experience indicates that a legislature does not deliberately enact inconsistent provisions when it is cognizant of them both, without expressly recognizing the inconsistency.

Sutherland Statutory Construction, Vol. 2B, §51.01, p.118.

Furthermore, this reading of §4.07 reconciles the two pertinent sections dealing with the authorization of the Legislative Secretary when the Legislature is recessed or adjourned. To follow the approach Plaintiffs advocate would result in conflict between the two rules. Plaintiffs claim that §4.07 should read as a command, which would allow the Legislature the option of designating the legislative Secretary to receive messages, or not, while in recess. Section 1118(c) in contrast, even by Plaintiffs reading empowers the Legislative Secretary at all times to receive messages during recess:

> (c) At any time when the Legislature is in recess the Legislative Secretary is empowered to and shall receive any messages or communications of any kind addressed to the Legislature from the Governor. For purposes of this Paragraph receipt of messages or communications of any kind from the Governor to

the Legislature shall occur if delivered to the Legislative Secretary or to the Office of the Legislative Secretary.

Plaintiffs' proposed reading of §§4.07 and 1118 would create conflict, uncertainty and confusion regarding the responsibilities of the Legislative Secretary and the Legislature, resulting in more litigation similar to the instant case. The Court declines such a reading. Thus under §4.07 of the Standing Rules, this Court additionally finds that the return of Bill 495 was not prevented by the Legislature's adjournment.

4. **The Governor Was Not Prevented From Returning Bill 495 When He Made No Effort to Return The Bill. A Bill May Only Be Pocket Vetoed by The Governor Upon The Exercise of That Right, Not by Default.**

The Court also feels compelled to address the fact that the Governor never attempted to return Bill 495, with objections, in order to veto the bill. "Because immediate action on solid waste management is a basic necessity for life, I allowed Substitute Bill No. 495 to go into law without benefit of the signature of the Governor." Letter from Governor Gutierrez to Speaker Unpingco, dated February 22, 1998. The preservation of separation of powers principles and the right of the Legislature to exercise the checks and balances afforded it by the Organic Act which Plaintiffs purport to espouse could not be more damaged than by a decision adopting Plaintiffs' version of the law. In so doing, this Court would find that the Governor vetoed a law that he fully intended to pass, and would deny the Legislature the opportunity to override this veto. The Court cannot

imagine a more unjust decision. The pocket veto provision of §1423i is a right to be exercised at the discretion of the executive, another check provided by the Organic Act. It is not a trap for the unwary executive, who pays no attention to the Legislature's designation or lack thereof of an authorized recipient during recesses or adjournments. "The basic question before the Court relative to the merits of the case is whether the defendant's exercise of the pocket veto is valid . . . ." Bordallo, 416 F.Supp at 85. Indeed, far from being a default assumption, there exists in the law a "preferred construction" that a return of a bill was not prevented by an adjournment. Kennedy, 511 F.2d at 438.

What Plaintiffs are really arguing is *if* the Governor had attempted to return the bill, he *probably* would not have been able to return it, because no one was authorized to receive it. No matter how the Governor had managed to return the bill–had he ever made such an attempt, and despite the fact that the Legislature was afforded an opportunity to override his veto, that would not be sufficient, according to Plaintiffs. A violation of the Legislature's Standing Rules or 2 GCA §1118 necessarily and absolutely implies a violation of §1423i of the Organic Act, under this logic.

The Court is forced to deal in hypotheticals here, since it is undisputed that the Governor never made an attempt to veto the bill and return it to the Legislature within the 10 day period of §1423i. Nor did he ever display any desire to veto and return Bill 495 to the Legislature. The court reiterates that it cannot be fairly disputed that the Governor fully intended to have Bill 495 enacted into law, as is proven from the letter he attached to Bill 495 which stated: "Because immediate action on solid waste management is a basic necessity for life, I allowed Substitute Bill No. 495 to

go into law without benefit of the Signature of the Governor."

Plaintiffs ask this Court to break new legal ground in asserting that a Governor is prevented from returning a bill, though he had no desire or made no attempt to do so. Such a ruling would lead to illogical and nonsensical results. Unlike other cases where the President did nothing on a bill, see e.g., The Pocket Veto case (President neither signed bill nor returned it to Senate—no indications at all of his intent to veto or allow a bill to pass into law), the Governor here clearly signaled his intent. For example, consider a situation where the Legislature intentionally recesses or adjourns, intrasession, for a period of 3 weeks without formally designating anyone to receive vetoed bills from the Governor. Additionally, the Legislature passes a bill and sends it to the Governor on its final day, just before its recess or adjournment. The Governor then decides to veto the bill, and manages to return the bill within 10 days of its presentment to him, say by contacting the Speaker who reconvenes the Legislature under §1118(b). If the Legislature were to then override the veto by a two-thirds vote, would the bill still fail to become law? Following Plaintiffs' proposed rule the bill would still be invalid because by adjourning without authorizing anyone to receive messages, all bills are automatically, based on judicial fiat and without any deference to the facts of a case or the purposes behind the pocket veto law, prevented from being returned upon the moment of adjournment without authorizing an appropriate Legislative agent. No matter that the Legislature reconvenes within hours, in order to override the Governor's veto. Their actual return to session, following Plaintiffs' logic, is irrelevant, just as the Governor's actual desire to return the bill still results in a finding of prevention. The Legislature cannot eliminate prevention by reconvening – the bill's fate is sealed the

moment they adjourned without authorizing a receiver of messages. It is not actual prevention, according to Plaintiffs, but the blind adherence to procedure, devoid of reality, which determines whether the bill's return was prevented. The parties' actions, the purposes behind and the fears concerning the pocket veto provision would no longer be relevant the moment the Legislature crosses the line of adjournment without authorization.

While this might make sense to lawyers who argue abstract principles of law, a step back from the issue reveals that the rule defies common sense. In this hypothetical, according to Plaintiffs' logic, 1) the Governor would legally be "prevented from returning the bill," though he in fact did just that; and 2) in order to protect the Legislature's power to pass laws and override gubernatorial vetoes under the Organic Act, they must be denied their opportunity to override the Governor's veto. While this hypothetical might appear absurd, it is no more so than Plaintiffs' argument that both the Legislature's and the Governor's undisputed desire to enact Bill 495 must be invalidated, in order to protect separation of powers principles which are not threatened on the facts of this case.

The Governor could not be prevented from returning a bill by adjournment, where he had no desire no to return the bill, made no attempt to return the bill, and clearly indicated his attempt to allow the bill to pass into law. To hold otherwise would essentially trample upon separation of powers principles, which are in no way threatened, in order to ensure their preservation.

IV. CONCLUSION

If the Governor was not prevented by the fact of the Legislature's adjournment, from returning the bill,

then the Governor was required to either sign the bill, return it to Legislature with his objections, or let it become law without his signature. Bordallo, 416 F.Supp at 86. The Court having found that on these facts the bill's return was not prevented by the adjournment, and the evidence being undisputed that the Governor did not return the bill with his objections, the Court finds, as the Governor expressly stated, that he let the bill pass into law without his signature. Based on the foregoing, the Court DENIES Plaintiffs' Complaint for Injunctive and Declaratory Relief.

SO ORDERED this 1ST day of June, 1999.

/s/ Steven S. Unpingco
Judge, Superior Court of Guam

IN THE SUPREME COURT OF GUAM

VICENTE C. PANGELINAN, Senator, and JOSEPH C. WESLEY, Mayor, on behalf of themselves and all those similarly situated,
Plaintiffs-Appellants,

vs.

CARL T.C. GUTIERREZ, Governor, Y'ASELA A. PEREIRA, Treasurer, the GOVERNMENT OF GUAM, and DOES 1 THROUGH 10,
Defendants-Appellees,

OPINION

Cite as 2001 Guam 11

Supreme Court Case No.: CVA99-020
Superior Court Case No.: SP00073-98

Appeal from the Superior Court of Guam
Argued and submitted December 10, 1999
Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, Associate Justice; and JOHN MANGLONA, Designated Justice.

SIGUENZA, J.:

The lower court decision found in favor of the Appellees, Gutierrez, et al., holding that Substitute Bill No. 495 was not pocket vetoed. We find that there was a valid pocket veto of Substitute Bill No. 495 and that the doctrine of ratification does not apply. Therefore, we reverse the lower court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

On February 7, 1998, the 24th Guam Legislature passed Substitute Bill No. 495 (hereinafter "Bill 495"), by eleven (11) to ten (10) votes. Bill 495, later designated as Guam Pub.L. 24-139 (February 22, 1998), was enacted to update Guam's Solid Waste Management Plan, commonly referred to as "the Garbage Bill."

Attached to the bill was a rider which acted to reorganize the distribution of power within the judicial branch.[1]

Later that day, Senator Eduardo J. Cruz moved to adjourn subject to the call of the Speaker of the Legislature. The motion carried and the Legislature adjourned. The Legislature did not specifically authorize anyone to receive messages from the Governor during that legislative break.

[1] Essentially, the rider served to divest the Supreme Court of Guam of administrative authority over the Superior Court and return such power to the Superior Court.

On February 10, 1998, Bill 495 was presented to Governor Carl T.C. Gutierrez for signature. Ten (10) days after presentment, Sundays excepted, the Legislature was not in session and the Governor had not returned Bill 495 to the Legislature or anyone connected thereto. Instead, on February 22, 1998, the Governor sent the unsigned bill and a letter to Speaker Unpingco explaining his decision to neither sign nor veto Bill 495 and identifying his reasons therefor. Noting his dismay that it would not be possible to control the "whim [s]" of the Legislature, the Governor indicated that he "allowed Substitute Bill No. 495 to go into law without the benefit of the signature of the Governor." Appellants' Excerpts of Record, Exh. C at 2. The Legislature received the Governor's letter on February 23, 1998. On February 26, 1998, the Legislature reconvened, nineteen (19) days after adjournment. On March 12, 1998, thirty (30) days after presentment, the Governor had not signed Bill 495.

Bill 495 was subsequently referred to by two different public laws. On March 25, 1998, the Legislature passed Bill No. 525, which became Guam Pub.L. 24- 166 (April 11, 1998). On October 2, 1998, the Legislature overrode the Governor's veto to enact Bill No. 520, which became Guam Pub.L. 24-272 (October 8, 1998). Both P.L. 24-166 and P.L. 24-272 make reference to the Solid Waste Management Plan section of Bill 495.

Senator Vicente C. Pangelinan and Mayor Joseph C. Wesley, on behalf of themselves and all those similarly situated (hereinafter "the Appellants"), filed a Complaint for Declaratory Judgment and Injunctive Relief, as well as a Motion for Preliminary Injunction and Consolidation of the Hearing with the Trial on the Merits. Governor Gutierrez, Treasurer Y'asela A.

Pereira, the Government of Guam, and unnamed Does (hereinafter "the Appellees"), filed an Opposition to Plaintiffs' Motion for a Preliminary Injunction and then a Motion to Dismiss under Guam R.Civ.P. 12(b)(6). The Mayors' Council of Guam moved *ex parte* to intervene pursuant to Guam R.Civ.P. 24 and filed an answer and Motion to Dismiss, as well. The hearing on May 4, 1999, was treated as a trial on the merits, with the parties stipulating to the admissibility of all submitted documents. The trial court disposed of all issues, including those raised in the motions, and rendered a final decision. The Decision and Order was filed on June 1, 1999, and was entered on the docket on June 2, 1999. The lower court found in favor of the Appellees, and the Appellants subsequently filed a timely appeal on June 4, 1999.

ANALYSIS

The Supreme Court has jurisdiction over this matter pursuant to Title 7 GCA §§ 3107, 3108, (1994). The Appellants raise two issues on appeal--that the trial court erred in finding there was no pocket veto of Bill 495 pursuant to 48 U.S.C. § 1423i, the Organic Act of Guam, and that Bill 495 was not subsequently ratified. Issues of statutory interpretation are questions of law reviewed *de novo. Ada v. Guam Telephone Authority,* 1999 Guam 10, ¶ 10; *People v.. Kim,* 1999 Guam 7, ¶ 7; *Camacho v. Camacho,* 1997 Guam 5, ¶ 24. The application of facts to law is reviewed *de novo. People v. Santos,* 1999 Guam 1, ¶ 31.

The Appellants argue that Bill 495 was pocket vetoed. The Appellees claim no pocket veto occurred, and additionally argue that even if Bill 495 was pocket vetoed, it was subsequently ratified. We find that Bill 495 was pocket

vetoed and that the Legislature's subsequent actions did not serve to ratify Bill 495.

A. The pocket veto.

This court understands the definition of a pocket veto to be as follows:

> Non-approval of a legislative act by the president or state governor, with the result that it fails to become law. Such is not the result of a written disapproval (a veto in the ordinary form), but rather by remaining silent until the adjournment of the legislative body, when the adjournment takes place before the expiration of the period allowed by the constitution for the examination of the bill by the executive.

BLACK'S LAW DICTIONARY 1565 (6th ed.1990). With that definition in mind, we will examine Guam's so-called pocket veto provision. The pocket veto provision is found in the Organic Act of Guam, 48 U.S.C. § 1423i, which provides:

> § 1423i. Approval of Bills. Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, *unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law.*

48 U.S.C. § 1423i (1987) (emphasis added).

There are two broad reasons why the circumstances of this case resulted in a pocket veto. The first regards the lack of adequate procedures surrounding delivery of gubernatorial messages to an agent of the Legislature during legislative absence. The second regards the entire process stated in 48 U.S.C. § 1423i which describes the sole manner in which bills become law.

1. Lack of adequate procedures.

The first United States Supreme Court case examining the federal pocket veto, *The Pocket Veto Case*, 279 U.S. 655, 49 S.Ct. 463 (1929), sets forth a number of concerns inherent in delivery of bills to an agent of Congress.[2] In *Pocket Veto*, Congress presented Senate Bill No. 3185 to the President on June 24, 1926. *Id.* at 672, 49 S.Ct. at 464. On July 3, Congress adjourned its first session *sine die*,[3] and did not return to begin its second session until the first Monday in December. *Id.* The ten day period within which the President was to have either signed the bill or returned it with his

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[2] The relevant section of Article I, Section 7, Clause 2 of the federal constitution reads as follows:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.... If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

U.S. Const. art. I, § 7, cl. 2.

[3] The Senate initially adjourned until November 10, where it sat as a court of impeachment, and then adjourned that day *sine die*, i.e., without date set for return. *Id.* at 672, 49 S.Ct. at 464.

objections terminated on July 6, 1926, while both Houses of Congress were out of session. *Id.* The President neither signed nor returned the bill with his objections; nor did he appear to issue any statement relative to it. *Id.* at 673, 49 S.Ct. at 464. The law was not published. *Id.* The plaintiff sought to have the law enforced, but the United States government claimed that it had been pocket vetoed. *Id. at 673-75, 49 S. Ct. at 464-65*

The United States Supreme Court held that to properly return a bill to the house in which it originated, it must be returned to "the 'House' when sitting in an organized capacity for the transaction of business," i.e., the house in session. *Id.* at 683, 49 S.Ct. at 467. Even if

> Congress ... enacted [a] statute authorizing [an] officer or agent of either House to receive for it bills returned by the President during its adjournment, and ... there [was a] rule to that effect in either House, the delivery of the bill to such officer or agent, even if authorized by Congress itself, would not comply with the constitutional mandate.

Id. at 684, 49 S.Ct. at 468. The Court expressed concern over the dangers inherent in delivery to an agent rather than the house in session:

> [I]t was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, and not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later

> date when the time for the return of the bill to the House had expired.

Id. at 685, 49 S.Ct. at 468.

Subsequent caselaw has seemed to modify the strict ban on delivery to an agent placed by the *Pocket Veto* Court. When the issue of the pocket veto under 48 U.S.C. § 1423i was litigated approximately 25 years ago in *Bordallo v. Camacho*, 416 F.Supp. 83 (D.Guam 1973), and then on appeal at 520 F.2d 763 (9th Cir.1975), a more lenient approach was adopted. In *Bordallo,* Bill No. 302 was passed by the Guam Legislature on July 10, 1973; it was then presented to the Governor on July 26, 1973. The Legislature adjourned on July 16 until August 27, 1973. *Bordallo*, 416 F.Supp. at 84. The Governor neither signed the bill nor returned it with his objections. *Id.* at 85. Instead, he sent a message to an unidentified agent of the 'Legislature on August 7, the tenth day, Sundays excepted, after presentment, stating that he was pocket vetoing the bill. *Id.*

For the Ninth Circuit, constructive delivery of bills to the Legislature during a legislative absence seemed to be deemed adequate. *Bordallo*, 520 F.2d at 764. Under our interpretation of the relevant caselaw, in order to allay the *Pocket Veto* concerns, more than mere designation of an agent for receipt is required. We read *Bordallo* to mandate that those other procedures should account for the "receipt, filing, routing, and safekeeping of such messages as might be delivered to the Legislature" in their absence. *Id.* Therefore, the procedures that were in place at the time Bill 495 was presented to the Governor must be examined.

*4 In this case, the measures mandated by *Bordallo* are found in the Standing Rules of the 24th Guam Legislature and Title 2 GCA § 1118, (1996). The Standing Rule for the

24th Legislature regarding delivery of communications, Rule § 4.07, begins with:

> All communications, petitions and messages addressed to the Legislature shall be delivered to the Legislative Secretary, who shall transmit them to the Committee on Rules for proper disposition.

24th Guam Legislature Standing Rule § 4.07. The lower court incorrectly quoted Standing Rule § 4.07 for the 25th Legislature as that of the 24th Legislature. Rule § 4.07 for the 25th Legislature reads in part as follows:

> All communications, petitions and messages addressed to *I Liheslaturan Guahan* shall be delivered to the Speaker, who shall transmit them to the Legislative Secretary for record keeping and to the Committee on Rules for proper disposition. The Legislative Secretary shall be designated to receive all bills transmitted to *I Maga'lahen Guahan* and being returned pursuant to the Guam Organic Act, 48 U.S.C. § 1423i, *Approval of Bills,* whether *I Liheslaturan Guahan* is in Session, Recessed or has Adjourned.

25th Guam Legislature Standing Rule § 4.07; *see* Appellants' Excerpts of Record, Seq. No. 97 at 14-15.

Title 2 GCA § 1118 reads in part:

> (b) At any time when the Legislature is in recess or has adjourned and could be in session but for such recess or adjournment, either the Speaker or the Committee on Rules may summon the Legislature to meet for whatever period of time the Legislature shall deem required. A meeting called pursuant to this paragraph shall be a continuation of the regular session last convened pursuant to Paragraph (a) of this Section.
>
> (c) At any time when the Legislature is in recess the Legislative Secretary is empowered to and shall

> receive any messages or communications of any kind addressed to the Legislature from the Governor. For purposes of this Paragraph receipt of messages or communications of any kind from the Governor to the Legislature shall occur if delivered to the Legislative Secretary or to the Office of the Legislative Secretary.

2 GCA § 1118(b), (c).

Additionally, the Legislature could have specifically authorized someone to receive messages from the Governor during the adjournment, but it failed to specifically authorize anyone to do so. It would, however, so authorize the Speaker at the close of its next session, contrary to both the Standing Rules and the GCA. *See* Appellants' Excerpts of Record, Seq. No. 11 at 2.

The lower court, though quoting Rule § 4.07 of the 25th rather than the 24th Legislature, indicated that the Standing Rule may be read as a command or as a designation. In the spirit of harmonization with 2 GCA § 1118, it selected the latter. Therefore, the lower court determined that both 2 GCA § 1118(c) and Standing Rule § 4.07 apply. In so doing, the lower court collapsed "adjournment" and "recess" into one term. This, however, does not appear to this court to be the best interpretation of the two terms.

The Standing Rules for the 24th and the 25th Legislatures reference Mason's Manual on Legislative Procedure as the source to consult for questions regarding the Standing Rules. Mason's suggests a difference between an adjournment and a recess. *See* American Soc'y of Legislative Clerks & Secretaries, Mason's Manual of Legislative Procedure § 214 (1989). The relevant section of Mason's reads as follows:

> Distinction Between Adjournment and Recess
> 1. The basic distinction between adjournment and a recess is that an adjournment terminates a meeting, while a recess is only an interruption or break in a meeting. After an adjournment a meeting begins with the procedure of opening a new meeting. After a recess the business or procedure of a meeting takes up at the point it was interrupted.
> 2. Breaks in the meetings of a day, as for meals, are usually recesses, but termination of meetings until a later day are adjournments.

Id.

The Legislature itself chose to "adjourn" according to the Legislative Daily Journal entry. Appellants' Excerpts of Record, Exh. A at 12. In Legislative Daily Journal entries, breaks within sessions are termed "recesses." *See id.* at 1. When the session resumes after a recess, the formalities associated with beginning a meeting are not employed. *See id.* It is an "elementary" canon of construction that "effect must be given, if possible, to every word, clause and sentence of a statute." Sutherland Stat. Const. § 46.06 (5th ed.) (citation omitted). With that rule in mind, by the definitions contained in Mason's and the Legislature's own procedures, the Legislature has demonstrated recognition of the distinction between a recess and an adjournment and, in the instant case, appears to have adjourned rather than recessed. When the Legislature returned from its break in the instant case, they began with the procedure for opening a new day of business, as opposed to a recess within a day of business. *See* Appellants' Excerpts of Record, Exh. B at 1. We then find that 2 GCA § 1118(c) was inapplicable.

The only applicable procedural measure to be addressed is Standing Rule § 4.07. Rule § 4.07 does not specifically authorize the Legislative Secretary to receive

bills from the Governor during any sort of legislative absence, but even if it could be read to so include such duties, it would be insufficient to safeguard against the dangers indicated in *Pocket Veto*. Despite the Appellees' argument that 2 GCA § 1118 and Rule § 4.07 were enacted in the wake of *Bordallo* specifically to address these *Pocket Veto* concerns, our reading of *Bordallo* leads us to believe that more elaborate procedures of the type mandated by the Ninth Circuit, procedures beyond the mere designation of an agent for receipt, are required in order to effect a valid delivery of a bill from the Governor to the Legislature when the Legislature is not in session.

Finally, the Appellees contend that over the past fifteen years, the practice has been to have the Speaker receive messages from the Governor. However, this practice violates 2 GCA § 1118 which has been in place since 1976, and the Standing Rules of the 24th and, in part, the current 25th Legislatures. Past practice best supports the contention that there was confusion as to procedure, especially since the Governor seemed intent upon establishing and following delivery procedures, at least delivery procedures of legislative communications to the Executive Branch. Appellants' Excerpts of Record, Exh. D, Exh. F. Moreover, past practice is irrelevant. As stated in another United States Supreme Court case regarding the pocket veto provision, *Wright v. United States*, 302 U.S. 583, 598, 58 S.Ct. 395, 401 (1938), "[t]he question now raised ... must be resolved not by past uncertainties, assumptions, or arguments, but by the application of the controlling principles of constitutional interpretation."[4]

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[4] The argument that the Governor had returned bills to the Legislature when it was in recess before without difficulty was similarly discussed by the district court in *Bordallo*. In response, the court stated that "[s]imply because the Governor has

As the Ninth Circuit stated in *Bordallo,* the district court was correct in finding there had been a pocket veto "in view of the ease with which the Guam Legislature could have made such provisions if it thought the prospect of a pocket veto to be undesirable." Bordallo, 520 F.2d at 765. Similarly in this case, it was the prerogative of the Guam Legislature to institute the above-described adequate procedures. The Legislature could have easily chosen to amend its Standing Rules to provide for return procedures, just as it amended those Rules for the 25th Legislature, yet it did not.[5] [FN5] Such procedures are important in order to effect orderly government and better serve the people of Guam. If there is uncertainty regarding the delivery of bills back to the Legislature or if bills are not properly recorded and preserved, the Legislature cannot act swiftly to override a veto, if necessary, or perhaps enact further legislation that would be dependent upon any prior enactment. Both the Executive and the Legislative Branches should be certain and aware, in a timely manner, of the status of legislation at all times within the enactment process. More extensive procedures surrounding delivery to the Legislature, when adjourned, are needed to ensure that. Since adequate procedures were not in place, we hold that there was a pocket veto of Bill 495.

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returned bills during recesses doesn't prove that he is not prevented from returning bills by a recess. The Pocket Veto Case is concerned with the Constitutional interpretation and not the physical facts of the matter. However, it is important that the Governor act consistently." Bordallo, 416 F.Supp. at 88.

[5] The issue of whether Rule § 4.07 for the 25th Guam Legislature adequately addresses the *Pocket Veto* concerns discussed in this opinion is not before the court at this time and we make no determinations thereon.

2. Process by which bills are enacted into law.

In cases involving statutory construction, the plain language of a statute must be the starting point. *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68, 102 S.Ct. 1534, 1537 (1982). This court believes the logical and plain reading of 48 U.S.C. § 1423i outlines a complete procedure whereby a bill becomes a law. If the Legislature is in session, the Governor has ten (10) days within which he must either sign a bill, thereby enacting it into law, or send the bill back to the Legislature with his objections, at which point the Legislature may override the veto with the requisite votes. *See* 48 U.S.C. § 1423i.

However, if the Legislature is not in session, the Governor then has thirty (30) days within which to sign the bill into law, and if he does not sign the bill, then it does not become law. *See Thirteenth Guam Legislature v. Bordallo*, 430 F.Supp. 405, 413 n. 40 (D.Guam 1977) ("In the usual case, the bill becomes a law unless returned to the legislature within ten days. If the legislature has adjourned, however, a bill does not become law unless signed by the governor within thirty days."). The "pocket veto" does not come into effect, then, until the 30-day period has expired, provided the Legislature was not in session on the tenth day after presentment.[6]

Several other jurisdictions with constitutional pocket veto provisions akin to that of Guam follow a similar procedure. For example, the Constitution of South Carolina, Article IV, Section 21, Clause 3 states:

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[6] In this way, 48 U.S.C. § 1423i differs from the analogous provision in the United States Constitution, as do the pocket veto clauses of several state constitutions.

> If a bill or joint resolution shall not be returned by the Governor within five days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting.

S.C. Const. art. IV, § 21, cl. 3. The South Carolina Supreme Court in *Williams v. Morris*, 464 S.E.2d 97 (S.C.1995), a case that, admittedly, discussed the pocket veto indirectly, determined that this section of the state constitution operated to prescribe two ways in which a bill may become law without the Governor's signature:

> First, if the Governor does not return the bill with objections within five days, it becomes law automatically, provided the General Assembly still is in session on the fifth day. However, when the legislature is not still in session on the fifth day, then if the Governor does not return the bill with objections within the new time period which extends to the second day after the General Assembly's next meeting, the bill becomes law automatically.

Id. at 99;[7] *see Gilmore v. Brown*, 451 N.E.2d 235, 236 (Ohio 1983) (seemingly stating a similar proposition and also indicating that many courts have taken the same position).

We read the Ninth Circuit *Bordallo* decision to comport comfortably with our elucidation of this above-

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[7] It should be noted that in contrast to the Organic Act of Guam, the Constitution of South Carolina provides that if the Governor takes no action within the additional time period granted if the legislature is absent in order to consider legislation, the bill becomes law. In the analogous Organic Act provision, if after the additional time period the Governor has not acted, the bill does not become law.

described procedure. Moreover, this court has already stated that "[t]hough pre-existing precedent continues to operate until addressed by this Court, decisions of the federal courts are not controlling upon our construction of the law." *Sumitomo Construction Co. v. Zhong Ye, Inc.*, 1997 Guam 8, ¶ 6. Accordingly, in *Sumitomo,* instead of following local precedent, this court relied upon "federal authority ... in direct contrast with Guam precedent established by the Appellate Division of the District Court of Guam." *Id.* We further articulated our position regarding previous federal decisions construing Guam law as follows:

> [W]hile we will not disturb precedent that is well supported in law and well reasoned, we clearly are within our authority to modify those interpretations previously addressed by federal courts. When choosing to make such changes, we will use our own independent and reasoned analysis of the issues before us. Moreover, based on our familiarity with these matters, we will give consideration to local law and customs, if applicable, and provide for their proper effect.

Id. (citing *People v. Quenga,* 1997 Guam 6, ¶ 7 n. 4). Federal court decisions do not prevent this court from determining the correct interpretation of provisions of the Organic Act, Guam's constitution.

Our reading of this procedure whereby bills become law in the Organic Act also best fulfills the two "fundamental purposes" of the pocket veto provision described by the *Wright* Court as: "(1) That the [Executive] shall have suitable opportunity to consider the bills presented to him; and (2) that the [Legislature] shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto." *Wright,* 302 U.S. at 596, 58 S.Ct. at 400. The holding in *Wright* was limited by the Court to situations in which one house took a

constitutionally permissible three-day recess so that Congress was still in session, thereby making the pocket veto provision inoperative. However, this *dicta* describing the purposes of the pocket veto provision has been cited frequently in other decisions, including the district court's reference in *Bordallo,* as providing wise interpretive guidance. *See, e.g., Bordallo,* 416 F.Supp. at 89.

We also note that the above-stated procedure by which bills are enacted is not dependent upon the Governor's supposed intent. The lower court and the Appellees place significant weight on the Governor's letter to the Legislature that allegedly evinced his intent to let the bill lapse into law. Appellants' Excerpts of Record, Exh. C at 2. However, the Governor's intent is not relevant; instead, what is relevant is the procedure outlined by the Organic Act. Determinations relying upon the Governor's intent are misplaced.

B. Ratification.

The court is unpersuaded by the Appellees' argument that the Legislature's subsequent actions ratified Bill 495. If a bill has been vetoed, as we conclude was the case with Bill 495, it is *void ab initio* and may not then be ratified. *See Dow Hydrocarbons & Resources v. Kennedy,* 694 So.2d 215, 218 n. 7 (La.1997). One cannot transform a vetoed bill into a passed bill merely by acting as if it had been passed initially. The vetoed bill is dead, and subsequent legislation that purports to ratify the dead bill is "ineffectual to put life in the corpse." *Williams v. Dormany,* 126 So. 117, 121 (Fla.1930) (citation omitted) (holding that a later statute may not validate an act not passed in conformity with constitutional requirements). Therefore, Bill 495 was not ratified by subsequent legislation.

CONCLUSION

The three branches of government should work together smoothly, harmoniously, and respectful of each other's authority. Dialogue between the Executive and the Legislative Branches should be conducted in an orderly manner to better serve the people of Guam, and it is the duty of the Judicial Branch to interpret the law and thereby help preserve that orderliness. This philosophy underlies the spirit of this opinion.

This court has frequently enforced the principle of separation of powers. *See Hamlet v. Charfauros,* 1999 Guam 18; *Borja v. Bitanga,* 1998 Guam 29; *People v. Lujan,* 1998 Guam 28; *In re: Request of the 24th Guam Legislature,* 1997 Guam 15; *People v. Quenga,* 1997 Guam 6; *Taisipic v. Marion,* 1996 Guam 9. In this system of checks and balances, the Governor must not be allowed to act in silence and the Legislature must not be allowed to subvert the Executive Branch. The Governor requires time to consider passed legislation. The Legislature cannot, by choosing to adjourn such that it is absent at the end of that time, exert pressure on the Governor to consider too hastily the legislation before him. Instead of forcing the Governor to return a bill before the Legislature adjourns, he has thirty days within which he may consider the legislation and sign if approved. This way, too, the Legislature may act if it disagrees with the Governor; otherwise, through the pocket veto provision of 48 U.S.C. § 1423i, they are intentionally rendered impotent. Additionally, if the Legislature would like to be able to receive gubernatorial messages during a legislative absence, more formal procedures surrounding their receipt would need to be in place for the Legislature to ensure the status of bills and then be able to promptly attempt to override any vetoes if necessary. Finally, a vetoed law may not be ratified by subsequent mention in future law.

This method of enactment was not contemplated by the Organic Act, and the Legislature should not be permitted to enact vetoed law through the ratification backdoor.

Therefore the judgment of the lower court is REVERSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed: May 31, 2000
Cathy A. Catterson, Clerk
U.S. Court of Appeals

THE JUDICIAL COUNCIL FOR THE SUPERIOR COURT OF GUAM,	)	No. 00-70440
Petitioner,	)	DC# CV-A99-00020 Guam (Hagnata)
v.	)	ORDER
VICENTE C. PANGELINAN, Senator; et al.,	)	
Respondents.	)	

Before: PREGERSON, FERNANDEZ and WARDLAW, Circuit Judges

Petitioner's motion to extend the time for filing a petition for writ of certiorari is granted.

The petition for a writ of certiorari to review a final decision of the Supreme Court of Guam is denied.

The Clerk shall close this docket.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed: March 8, 2002
Cathy A. Catterson, Clerk
U.S. Court of Appeals

CARL T.C. GUTIERREZ, Governor; Y'ASELA A. PEREIRA; GOVERNMENT OF GUAM; DOES 1 through 10,	)	No. 00-70447
	)	Guam Sup. Ct. No. CV-99-00020
Petitioners,	)	
v.	)	
VICENTE C. PANGELINAN, Senator; JOSEPH C. WESLEY, Mayor, on behalf of themselves and all those similarly situated,	)	ORDER
Respondents.	)	

Before: B. FLETCHER, CANBY, and PAEZ, Circuit Judges.

The Judicial Council for the Superior Court of Guam's Motion to Intervene for the Purposes of Requesting a Rehearing En Banc and/or Conducting an Appeal is DENIED. The Motion to Extend Time for Filing Petition for Rehearing is DENIED. Finally, the Motion to Stay Mandate Pending Appeal of the Merits and/or Appeal of a Denial of the Motion to Intervene is DENIED.

II. RELEVANT PROVISIONS INVOLVED

- **Article 1, § 7, Cl. 2 of the United States Constitution**

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

- **Section 1 of the Fourteenth Amendment of the United States Constitution.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- **48 U.S.C. § 1423i**

Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. When a bill is returned by the Governor to the legislature with his objections, the legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects, and the items, or parts or portions thereof, so objected to shall not take effect. All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under section 1421a of this title. The Congress of the United States reserves the power and authority to annul the same.

48 U.S.C. § 1424-2

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 1424- 1(a) of this title, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

- **2 Guam Code Annotated ("GCA") § 1118 (1998 ver.).**

(a) The legislature shall convene in a new regular session at the seat of Government at 10:00 a.m. on the firsm Monday in January of each year. The regular session shall continue for such period as each Legislaure may determine, provided, however, that in no even shall a session continue beyond midnight of the day preceding the day upon which the next regular session of the Legisiaure is to convene.

(b) At any time when the Legislature is in recess or had adjourned and could be in session but for such recess or adjournment, iether theSpeaker or the Committee on Rules may summon the Legislature to meet for whatever period of time the Legislaure shall deem required. A meeting call pursuant to this paragraph shall be a continuation of the regular session last convened pursuant to Paragraph (a) of this Section.

(c) At any time when the Legislature is in recess the Legislative Secretary is empowered to and shall receive any messages or communications of any kind addressed to the Legislature from the Governor. For purposes of this Paragraph receivpt of messages or communications of any kind from the Governor to the Legislature shall occur if delivered to the Legislative Secretary or to the Office of the Legislative Secretary.

(d) Any business, bill or resolution pending at the findal adjournment of a regular session held in an odd-numbered year shall carry over with the same staus to the next regular session.

(e) No business, bill or resolution pending at the final adjourment of a regualar session held in an odd-

numbered year shall carry over with the same status to the next regular session.

(f) A session convening in an odd-numbered year shall be the first regular session of a Legislature and the session convening in the even-numbered years shall be the second regular session of the Legislature organized the preceding year.

§7103. Taxpayer Standing to Sue.

Any taxpayer who is a resident of Guam shall have standing to sue the government of Guam and any officer, agent, contractor, or employee of the Executive Branch of the government of Guam for the purpose of enjoining any officer, agent, contractor, or employee of the Executive Branch of the government of Guam from expending money without proper appropriation, without proper authority, illegally, or contrary to law, and to obtain a personal judgment in the courts of Guam against such officers, agents, contractors, or employees of the government of Guam and in favor of the Government of Guam for the return to the Government of Guam of any money which has been expended without proper appropriation, without proper authority, illegally, or contrary to law. For purposes of this Chapter, the Governor and Lt. Governor of Guam are officers of the government of Guam, and are included within the scope of this Chapter.

SOURCE: GC § 6280(c) added by P.L. 18-9.

- **5 G.C.A. § 7115**

The Senators and the Guam Legislature shall have standing to sue under this Chapter. The Legislative Counsel, or Assistant Legislative Counsel, may, as a part of his or her duties for the Guam Legislature, represent members of the Guam Legislature or the Guam Legislature, or both, in bringing suit under this Chapter, provided that in such cases, attorney's fees will not be allowed.

§3103. Supreme Court; Composition.

(a) The Supreme Court of Guam is established pursuant to 22A of the Organic Act of Guam and has such appellate jurisdiction as is prescribed by the Organic Act of Guam and by this Title. The Supreme Court shall consist of a full-time Chief Justice selected as herein provided, two (2) full-time Associate Justices, and up to four (4) part-time Associate Justices, in such numbers as are determined by the Judicial Council, in addition to Superior Court Judges as assigned by the Presiding Judge of the Superior Court upon request of the Chief Justice. Initially, the Governor shall appoint four (4) part-time Associate Justices. All such appointments are subject to the advice and consent of the Legislature.

(b) In addition, the Governor may appoint any Federal Judge or any Judge of a court of record in the Commonwealth of the Northern Mariana Islands, the Republic of Belau, or the Federated States of Micronesia to sit as an acting Associate Justice. Such appointees shall be referred to as designated Justices of the Supreme Court of Guam. To be appointed, the individual shall have practiced law or sat as a judge for a total of at least ten (10) years, be a graduate of a law school accredited by the American Bar Association, and, except for residency requirements and practice requirements on Guam, meet all other qualifications for a Justice. An appointment as a designated Justice shall be for four (4) years, and shall expire at the end of such period unless the designated Justice is reappointed by the Governor. All such appointments are subject to the advice and consent of the Legislature, and a designated Justice may not sit until so confirmed. The designated Justices shall sit as assigned by the Chief Justice, and while sitting shall have all the powers of an Associate Justice, and shall be paid

the same as a part-time Justice unless some other arrangement has been made by the Chief Justice with the court from which the designated Justice comes. Designated Justices are entitled to a per diem allowance when traveling away from home on official business for Guam at the rates set for other Associate Justices of Guam.

(c) The term Justice as used in this Title refers to all full-time and part-time Justices of the Supreme Court.

(d) The term en banc refers to all Justices (both full-time and part-time) sitting together. If any Justice is unavailable or disqualified, the Chief Justice shall fill the position with a designated Justice.

(e) The term designated Justice refers to any Judge of the Superior Court or other Judge from some other jurisdiction who is qualified by this Title to sit.

(f) In addition to the Supreme Court Justices, a Superior Court Judge may sit as a designated Justice at the direction of the Presiding Judge of the Superior Court as requested by the Chief Justice if no conflict exists and the designated Superior Court Judge did not hear the matter under appeal in the court below. While so sitting as a designated Justice, the Judge shall have the same powers as an Associate Judge. A Superior Court Judge so sitting shall receive no additional compensation.

(g) A part-time Justice or a designated Justice may sit as a designated Judge of the Superior Court at the direction of the Chief Justice as requested by the Presiding Judge of the Superior Court. While so sitting, the Justice shall have all the powers of a Judge of the Superior Court.

(h) The first Chief Justice shall be selected by the Governor of Guam from among his confirmed appointees for full-time Justices, to serve as Chief Justice for a three-year term. The selection shall be made and shall be submitted to the

Speaker of the Legislature. The first Chief Justice shall continue to serve as a Justice of the Supreme Court after his or her tenure as first Chief Justice is complete.

(i) Thereafter, the Chief Justice shall be selected from among the full-time Justices by a majority of all the Justices of the Supreme Court sitting en banc by secret ballot, to serve a three (3) year term commencing at the end of the term of the preceding Chief Justice and continuing until 10:00 o'clock AM on the third Tuesday of January three (3) years hence.

(j) No Justice may succeed himself or herself as Chief Justice.

(k) When a Chief Justice completes his or her term as Chief Justice, he or she shall continue to sit as a full-time Justice of the Supreme Court, until his or her term as Justice expires.

(l) In the event of the absence of the Chief Justice, the senior full-time Associate Justice shall act as Chief Justice. If no full-time Justice is available, then one (1) of the part-time Associate Justices shall act as Chief Justice, in order of seniority. If no full-time or part-time Justice is available, then one (1) of the Superior Court Judges sitting as a designated Justice shall act as Chief Justice, in order of seniority.

(m) In the event of a disqualification, conflict, or recusal of the Chief Justice in a given matter, the senior full-time Associate Justice shall act as Chief Justice as to that matter in making assignments of Justices or Judges, and in other procedural matters. If no full-time Justice is available, then one (1) of the part-time Associate Justices shall act as Chief Justice in the matter, in order of seniority. If no full-time or part-time Justice is available, then one (1) of the Superior Court Judges sitting as a designated Justice shall act as Chief Justice, in order of seniority.

(n) Part-time Justices may practice law or do other work, but may not work for, nor represent the government of Guam nor any autonomous agency thereof.

(o) In the event that a permanent vacancy occurs in the position of Chief Justice, the remaining Justices shall elect one (1) of their number to fill the unexpired term of the previous Chief Justice. In the event that the remaining term is less than two (2) years, the new Chief Justice may be reelected notwithstanding paragraph (j) of this section.

SOURCE: Completely new composition of the Supreme Court in P.L. 21-147.

- **7 G.C.A. § 6105**

(a) Any Judge shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned, but if, following complete disclosure to all parties in the proceeding of the reasons for disqualification, all parties agree to having the Judge continue to sit in the proceedings, he or she need not disqualify himself or herself.

(b) (b) A Judge shall also disqualify himself or herself in the following circumstances, but if, following complete disclosure to all parties in the proceeding of the reasons for his or her disqualification, all parties agree to having the Judge continue to sit in the proceedings, he or she need not disqualify himself or herself:

(1) Where he or she has a personal bias or prejudice concern ing a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
(2) Where in private practice he or she served as a lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer or either has been a material witness concerning the matter;
(3) Where he or she has served in governmental employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or, as such government em ployee, expressed an official opinion concerning the merits of the particular matter in controversy;
(4) Where he or she knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in the subject matter in contro versy or is a

party to the subject matter in controversy or is a party to the proceeding, or in any other interest that could be substan tially affected by the outcome of the proceeding;

(5) Where he or she or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the Judge's knowledge likely to be a material witness in the proceeding.

(c) A Judge should inform himself or herself about his or her personal and fiduciary interests and that of his or her spouse and minor children residing in his of her household.

(d) For the purpose of this section the following words or phrases shall have the meanings indicated:

(1) Proceeding includes pre-trial, appellate review or other stage of litigation;

(2) The degree of relationship is calculated according to the civil law system;

(3) Fiduciary includes such relationships as executor, adminis trator, trustee and guardian;

(4) Financial interest means ownership of a legal or equitable interest, however small, or a relationship as a director, advisor or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities isnot a financial interest in such

securities unless the Judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal or civil organization is not a financial interest in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company or a depository in a mutual savings association or a similar proprietary interest, is a financial interest in the organization only if the outcome of the proceed ing could substantially affect the value of the interest;

(iv) Ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(5) Judge means any Justice of the Supreme Court or Judge of the Superior Court.

- **Ninth Circuit Rule 6-2.**

Rule 6-2. Petition for Writ of Certiorari to Review Final Decisions of the Supreme Court of Guam

(a) Petition of Writ of Certiorari.

(1) A review of final decisions of the Supreme Court of Guam may be sought pursuant to 48 U.S.C. § 1424-2 by filing a petition for a writ of certiorari with the Clerk of the Court of Appeals within 21 days from the entry of the final decision of the Supreme Court of Guam in both civil and criminal cases. Petitioner shall pay $100.00 docketing fees to the Clerk of Court of Appeals. Petitioner shall serve one copy of the petition for a writ of certiorari on each of the parties to the proceedings in the Supreme Court of Guam.

(2) A cross-petition for a writ of certiorari may be filed within 21 days after the first petition was filed.

(3) If a timely petition for rehearing of the final decision of the Supreme Court of Guam is filed pursuant to the Rules of the Appellate Procedure of the Supreme Court of Guam, the time for filing the petition for a writ of certiorari shall run from the entry of the order denying the petition.

(b) Content of Petition. The petition for a writ of certiorari shall contain, in the order indicated:

(1) A table of contents and a table of authorities;

(2) A statement of the basis of jurisdiction of this Court, showing the date on which the judgment sought to be reviewed was entered, the date of any order respecting rehearing, and, in the case of a cross-

petition for a writ of certiorari, the date of filing the petition for a writ of certiorari with which the cross-petition is filed;

(3) Question(s) presented for review, expressed concisely in relation to the circumstances of the case;

(4) A statement of the case summarizing the proceeding and the opinion of the Supreme Court of Guam, and setting out the facts material to the consideration of the question(s) presented;

(5) An argument amplifying the reasons relied upon for allowance of the writ;

(6) A short conclusion;

(7) An appendix, containing the final decision of the Supreme Court of Guam; any other opinions, orders, findings of fact, and conclusion of law entered by the Supreme Court of Guam; statutes, rules, and regulations involved; and a list of all parties to the proceedings in the Supreme Court of Guam.

(c) Response.

Within 21 days after service of the petition for a writ of certiorari, an adversary party may file a response. All parties to the proceedings in the Supreme Court of Guam are deemed parties entitled file a response in the Court of Appeals, unless the petitioner notifies the Clerk of the Court of appeals in writing of the petitioner's belief that one or more of the parties in the Supreme Court of Guam have no interest in the outcome of the petition. No further memorandum may be filed, except with leave of court.

(d) Format and Length.

(1) The typeface, page size, margins, line space, and text style of a petition for a writ of certiorari and response(s) to the petition must be in compliance with Fed.R.App.P. 32 and 9th Cir. 32-1.

(2)

(i) A proportionately spaced petition for a writ of certiorari and response must not exceed 5,600 words, and may not have an average of more than 280 words per page, including footnotes and quotations. See 9th Cir.R. 32-3.

(ii) A petition for a writ of certiorari and the response to the petition must be accompanied by a certification of compliance which states that the petition or the response conforms to the format noted at (d)(1) and word count noted at (d)(2)(i) or (d)(2)(ii).

(iii) The petition for a writ of certiorari and the response to the petition must be accompanied by a certification of compliance pursuant to 9th Cir.R. 32-1.

(3) The word count and page limits under subparagraph (2)(i) and (2)(ii) do not include the table of contents, table of authorities, and appendix.

(4) The petition for a writ of certiorari and response(s) must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open. The cover of a petition for a writ of certiorari should be white; that of the response(s), cream.

(e) Copies.

Parties shall file an original and four (4) copies of the petition for a writ of certiorari, response(s) to the petition, and any supporting papers and appendices.

(f) Disposition of the Petition.

The petition any response(s) shall be referred to a motions panel for disposition. If a petition for a writ of certiorari is granted, the case will be scheduled for briefing and oral argument, if necessary.

(g) The Record on Review.
The record on review shall consist of the record presented to the Supreme court of Guam, and a certified copy of the docket entries prepared by the Clerk of the Supreme Court of Guam.

(g) The Certificate of Record.
When the record is completed, the Clerk of the Supreme Court of Guam shall file a certificate of record with the Clerk of the Court of Appeals. The certificate shall attest that all documents which comprise the record on appeal are available for the parties in the office of the Clerk of the Supreme Court of Superior Court of Guam.

The filing of the certificate of record with the Court of Appeals shall indicate that the Court of Appeals considers the record filed.

- **Rule 24 of the Federal Rules of Civil Procedure**

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United

States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

Rule 35 of Guam's Rules of Appellate Procedure

RULE 35–DEVOLUTION OF CHIEF JUSTICE'S DUTIES AND SYSTEM FOR APPOINTMENT OF PART-TIME JUSTICES TO MATTERS BEFORE THE COURT. (effective July 25, 1997)

a) *Performance of Chief Justice's duties when unavailable*

(1) Pursuant to 7 GCA §3103 (l) and (m), the duties of the Chief Justice shall be exercised by the duly appointed Chief Justice but if he or she is unavailable to act due to illness, leave, absence from the Territory of Guam; or as a result of disqualification, conflict or recusal; the next most senior full-time Justice who is not unavailable will act in his or her stead. If the Chief Justice is unavailable due to absence, leave or general incapacity; the duties associated with the office will pass to the successive Justice. If the Chief Justice is unable to act in a particular matter, that matter and the authority to act upon it will pass to the successive Justice. The Chief Justice, despite being in a leave status due to illness or other cause, remains unavailable so long as he or she is willing and able to administer the Court and to execute the duties of that position.

(2) As to the above succession, if all full-time Justices are unavailable, then the duty or duties of the Chief Justice shall be assumed by the most senior part-time Justice who is available. If all part-time Justices are unavailable, the most senior Designated Justice sitting regularly as a Judge on the Superior Court of Guam will act as Chief Justice.

(3) For the purposes of this Rule, seniority is determined by the date that each Justice is sworn to perform the duties of that office. The seniority of Designated Justices who sit regularly as Superior Court Judges will be determined by the date on which they were appointed to the particular matter which is then the occasion for their designation. Where several Justices, within a category described above, are sworn on the same date the order of their swearing will determine the order of precedence. In the event that two or more Judges of the Superior Court are appointed on the same date as Designated Justices, to hear a matter pending at the time this rule is invoked, precedence among these shall be determined by their respective seniority as Judges in the Superior Court of Guam.

b) *Assignments*

(1) Three-Justice panels of the court will be comprised of the court's full-time Justices. When less than three full-time Justices are available the following procedure will be used to appoint part-time Justices. The Chief Justice shall appoint the most senior part-time Justice to the first such assignment which is made after this Rule is established. In the event that this Justice is unavailable due to illness, absence from the Territory, disqualification, conflict or recusal, the assignment shall fall upon the next most senior part-time Justice. The next subsequent assignment shall fall upon the next most senior part-time Justice. The next subsequent assignment shall be made to the next most senior part-time Justice following the Justice who received the previous assignment. When all part-time Justices have been assigned the rotation will commence from the beginning and proceed in a consistent rotation.

(2) If no part-time Justice is available, the Chief Justice may discretionarily assign, based upon consideration of availability, cost and judicial expediency; any one of the Designated Justice who are then serving in such capacity pursuant to 7 GCA § 3103(b). In the event no Designated Justice is available, or the Chief Justice determines that interest of judicial economy or expediency require the use of a judicial officer then serving on the Superior Court of Guam, the Chief Justice may request that a Superior Court Judge be designated, per 7 GCA § 3103(f), to hear a particular matter. For purposes of this rule, each case heard will be considered a separate assignment.

(3) This rule is provided for the administrative purpose of ensuring an even distribution of work across the part-time Justices of the court. A deviation from the prescribed procedure provides no basis for challenge to the decision of any panel of the court, and the Chief Justice may, in his discretion and for good cause, depart from the assignment rotation identified here at any time.

- **Rule 19 of Guam's Rules of Civil Procedure**

Rule 19. Joinder of Persons Needed for Just Adjudication.

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in the proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)--(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent persons thus being regarded as indispensable. The factors to be considered by the court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or

avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleader asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)--(2) hereof who are not joined, and the reasons why they are not joined.

Exception of Class Actions. This Rule is subject to the provisions of Rule 23 [Class Actions].

Rule XVI, § 16.08(ix) of the Standing Rules for the 24th Guam Legislature

* * * *

Duties of the Legislative Counsel

§16.08. The services of the Legislative Counsel shall be available to all members. The Legislative Counsel shall act under the general supervision of the Chairperson of the Committee on Rules pursuant to a written contract, and shall:

(i) Act as counsel for the Legislature;

(ii) Prepare bills, resolutions and reports at the request of any member or committee;

(iii) Undertake such legal research as shall be requested by the Legislature or a member;

(iv) Advise the Legislature, from time to time, as to needed revisions of the laws of Guam and of the Rules;

(v) Present, from time to time, a statement to the Legislature calling attention to laws or rules which are obsolete or in conflict with other laws, resolutions or decisions of the courts;

(vi) Prepare a summary or digest pertaining to the intent, purpose and otherwise a general explanation of proposed bills, for distribution to the Senators;

(vii) Advise any member of the Legislature on all matters under debate;

(viii) Serve as parliamentarian at all sessions of the Legislature;

(ix) Represent the Legislature in any legal matters before any courts; and

(x) Present legal opinions in writing.

Rule XVII, § 17.12.01(viii) of the Standing Rules for the 25th Guam Legislature

* * * *

Section 17.12. Committee on Rules, Government Reform, Reorganization and Federal Affairs. The Committee on Rules, Government Reform, Reorganization and Federal Affairs shall consist of the following Members:

(i) the Chairperson, who shall be selected from among Members of the Majority Party;

(ii) the Speaker;

(iii) all Chairpersons of the other Standing Committees; *and*

(iv) three (3) members of the Minority, chosen by the Chairperson of the Committee on Rules, who shall be voting Members of the Committee.

Section 17.12.01. Jurisdiction. Subject and matters which are to be referred to the Committee on Rules shall include, but are not limited to, the following:

(i) all proposed amendments to the Rules and all resolutions and bills relating to the business, budget, design and activities of *I Liheslaturan Guåhan;*

(ii) all matters of enrollment and review;

(iii) all matters on order and arrangement;

(iv) all matters relating to Session Agenda;

(v) all matters relating to the Office of the Suruhanu;

(vi) all matters relating to the compilation and publication of the laws of Guam;

(vii) all matters pertaining to procedures for ensuring security of the Session Hall, including, but not limited to, the admission of visitors in the visitor areas, both during and outside Session meeting times;

(viii) all matters relating to the defense or initiation of court action on behalf of *I Liheslaturan Guåhan,* which shall be authorized by Rules Resolution;

(ix) all matters relating to any of the foregoing; *and*

(x) additional matters which shall be referred to the Committee on Rules, including the following:

(1) all matters relating to the Federal-Guam relationship between Guam and the United States of America, and to any changes in the statutes between them, and all related activities formerly overseen by the Committee on Federal and Foreign Affairs, for which this Committee on Rules is the successor, related to this matter which are designated by Public Law, resolution or executive order;

(2) all United States laws, regulations, treaties, compacts and agreements affecting Guam;

(3) all matters relating to Federal lands and Federal immigration law, including visas;

(4) if a Guam constitution be considered and adopted, all matters relating to the same;

(5) all matters relating to the relationship between the government of Guam and the military forces stationed on Guam;

(6) all matters relating to proposed changes in Guam's political status;

(7) all matters relating to the Commission on Self Determination, and such authorities as are granted under statute, resolution or executive order to the former Committee on Federal and Foreign Affairs for which this Committee is successor;

(8) all matters relative to the Guam Election Committee and the election laws of Guam;

(9) all matters creating a new department, agency, board or commission of the government of Guam;

(10) all matters relative to reorganization or restructuring of the government of Guam, or its instrumentalities and statutory reform; *and*

(11) all matters relative to government reform and all matters *not* otherwise designated.

* * * *

Rule XVII, §17.10.01 of the Standing Rules for the 26th Guam Legislature

Section 17.10.01. Jurisdiction. Subject and matters which are to be referred to the Committee on Rules shall include, but are not limited to, the following:

(i) proposed amendments to the Rules and resolutions and bills relating to the business, budget, design and activities of *I Liheslaturan Guåhan;*

(ii) matters of enrollment and review;

(iii) matters on order and arrangement;

(iv) matters relating to Session Agenda;

(v) matters relating to the Office of the Suruhanu;

(vi) matters relating to the compilation and publication of the laws of Guam;

(vii) matters pertaining to procedures for ensuring security of the Session Hall, including, but not limited to, the admission of visitors in the visitor areas, both during and outside Session meeting times;

(viii) matters relating to the defense or initiation of court action on behalf of *I Liheslaturan Guåhan,* which shall be authorized by Rules Resolution;

(ix) matters relating to any of the foregoing; *and*

(x) additional matters which shall be referred to the Committee on Rules, including the following:

*****

Rule XXIII, §23.12 of the Standing Rules for the 25th Guam Legislature

* * * *

Budgets for Legislative Funded Litigation.

Section 23.12. Members shall *not* initiate nor defend against any civil nor criminal lawsuit, federal, local or otherwise, with legislative funds, either under Committee, Senatorial office of other funds, *unless* prior authorization is obtained from the Chairperson of the Committee on Rules, whether or not suing, or being sued in their legislative capacities or otherwise. Any current civil or criminal litigation arising from before this legislative term utilizing legislative funds shall be brought before the Committee on Rules for review and action as to whether legislative funds shall continue to be used for the prosecution or defense thereof within thirty (30) days of the beginning of this legislative term.

* * * *

Rule XXIII, § 23.12 Standing Rules for the 26th Guam Legislature

* * * *

Budgets for Legislative Funded Litigation.

Section 23.12. Members shall *not* initiate nor defend against any civil nor criminal lawsuit, federal, local or otherwise, with legislative funds, either under Committee, Senatorial office or other funds, *unless* prior authorization is obtained from the Chairperson of the Committee on Rules, whether or not suing or being sued in their legislative capacities or otherwise. Any current civil or criminal litigation arising from before this legislative term utilizing legislative funds shall be brought before the Committee on Rules for review and action as to whether legislative funds shall continue to be used for the prosecution or defense thereof within thirty (30) days of the beginning of this legislative term.

* * * *

Rule XXVII, § 27.03 of the Standing Rules for the 24th Guam Legislature

RULE XXVII

TRAVEL AND TRANSPORTATION

General

§27.01. All persons traveling off-island on official business for the Guam Legislature shall provide themselves with funds sufficient for all current expenses. They shall exercise the same care in incurring expenses that a prudent persons would if traveling on personal business.

Purpose and Scope

§27.02. The purpose and scope of this rule is to provide standard travel policies and written procedures and controls governing off-island travel of members and employees of the Legislature.

Policy of the Legislature

§27.03. The policy of the Legislature is that all off-island travel must be performed either for the direct benefit of the government of Guam or to fulfill a real and legitimate obligation of the government of Guam. It is the further policy of the Legislature to permit travel off-island of members, attaches and certain employees in an effort to keep abreast of new and recent developments in legislative proceedings, techniques, administration and procedures in the various state, national and international legislative bodies.

* * * *

Rule XXVII, § 27.10 and § 27.11 of the Standing Rules for the 25th Guam Legislature

* * * *

Travel Status.

Section 27.10. Personnel shall be considered on travel status *only* during the time when conducting official business away from their regular place of business, or while traveling to and from the place at which such official business is transacted. Travel status begins with departure of common carriers from Guam on which the traveler has the traveler's regular place of business and terminates upon the traveler's return to Guam.

Allowance of Travel Time.

Section 27.11. The time considered as *"official travel"* shall be the reasonable time necessary to travel by air by the most direct route to and from the point, or points, specified in the travel authorization, plus the time necessary to transact the required official business. Every effort should be made to reserve complete flight schedules well in advance to avoid delays at transfer points. *Per diem* payment for time lost due to faulty bookings by the traveler may be disallowed. Travel time in excess of direct flight time, when other means of transportation are used, may be charged to vacation time or leave without pay in the case of employees.

When a vacation or leave without pay is added at the beginning or end of official travel of an employee, the allowance for transportation at the beginning or end of official travel, as the case

Rule XXVII, § 27.10 and § 27.11 of the Standing Rules for the 26th Guam Legislature

* * * *

Travel Status.

Section 27.10. Personnel shall be considered on travel status *only* during the time when conducting official business away from their regular place of business, or while traveling to and from the place at which such official business is transacted. Travel status begins with departure of common carriers from Guam on which the traveler has the traveler's regular place of business and terminates upon the traveler's return to Guam.

Allowance of Travel Time.

Section 27.11. The time considered as *"official travel"* shall be the reasonable time necessary to travel by air by the most direct route to and from the point, or points, specified in the travel authorization, plus the time necessary to transact the required official business. Every effort should be made to reserve complete flight schedules well in advance to avoid delays at transfer points. *Per diem* payment for time lost due to faulty bookings by the traveler may be disallowed. Travel time in excess of direct flight time, when other means of transportation are used, may be charged to vacation time or leave without pay in the case of employees.

When a vacation or leave without pay is added at the beginning or end of official travel of an employee, the allowance for transportation at the beginning or end of official travel, as the case may be, shall be the cost of air passage by the most direct route as if such air transportation had been utilized.

All travel must be by a usually traveled and most direct route. Travel tickets shall be for complete routes, *inclusive* of stopover privileges whenever and wherever practicable, to

minimize the cost of special or short-run trips, stopovers or backtracking.

When a vacation, unofficial business or leave without pay is included in, or added at, the beginning or end of official travel of an employee, the allowance for transportation shall *not* include additional travel costs resulting from unofficial travel or changes in itinerary as a result of unofficial travel, as the case may be, but the amount of expense born by *I Liheslaturan Guåhan* shall be the lower of the actual costs of transportation incurred by the traveler, or the cost of air passage and other necessary transportation from Guam and return by the most reasonably direct route available to and from the official destination(s), as if such reasonably direct transportation had been utilized, with any additional costs to be paid by the traveler.

* * * *

MINA' BENTE SAIS NA LIHESLATURAN GUAHAN
TWENTY SIXTH GUAM LEGISLATURE

VENDOR NO: _____

Transmittal Request Order No: 79vcp

A. Request For:
Purchase Order Date: _____ P.O. No.: _____ Acct No.: _____
Disencumber P.O. Date: _____ P.O. No.: _____ Acct No.: _____
In Favor of: _____

Articles(s)	Qty	Unit	Unit Price	Amount
1				
2				
3				
Total				$

If more space is required, list separately and attach to this form

For Delivery to: _____

B. Request For Payment:
Purchase Order Date: _____ P.O./CON/GSA No.: _____ Acct No.: _____
Direct Payment Date: _____ Voucher No.: _____ Acct No.: _____
Payable to: _____ $ _____

DR: _____	$ _____	DR _____	_____	$	
DR: _____	$ _____	DR _____	_____	$	
DR: _____	$ _____	DR _____	_____	$	
TOTAL	$ _____			$ _____	

Must Attach Original Invoices

C. Request For:
Travel Authorization Date: 5/7/01 T/A No.: 01267A0008 Acct No.: 6202-506
Name of Traveler: Senator vicente c. pangelinan Title: Senator
Itinerary: Fr: GUM/HON To: HON/GUM Days: 20
Purpose of Travel: 9th Circuit Court Hearing $ $ 3,370.00
Mode of Travel: AIR Name of Travel Agency or Carrier: CONTINENTAL AIRLINES
Amount of Travel Advanced Requested: $3,370.00 Departure: 610A 5/14/01 Return: 505P 6/02/01

D. Request For Transfer: Date: _____ $ _____
From Account No.: _____ To Account No.: 536 _____

E. Request For Contract or to Disencumber Contract Date: _____ $ _____
Contractor: _____ Contract No.: _____
Note Attach Fully Completed and Executed Contract

FISCAL
RECEIVED
BY
MAY 07 2001

Accounting Information:
Allotment No. 6202-506 Authorized Amount: 3,370.00
Contract No: _____ Purchase Order No: _____ Direct Payment _____
1st Quarter _____ 2nd Quarter _____
3rd Quarter 3,370.00 4th Quarter _____

Requested By: _____ Supervisor
Section: _____

Certified Funds Available:
per Marivic C. Rivera
Johnny S. Sablan, CFO - Acting
5/10/01
Date

Authorized Signature

7-May-01
Date

tro form revised 2/14/01

BEST AVAILABLE COPY

108a

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
TWENTY-SIXTH GUAM LEGISLATURE
155 Hester Street, Hagåtña, Guam 96910

Guam Legislature Fiscal Office
Chief Fiscal Officer
Date: August 17, 2001 Time: 2:35 p.m.
Received By: _____

DATE: 8/17/01

MEMORANDUM

TO: CHIEF OF FISCAL SERVICES

FROM: SENATOR VINCENTE C. PANGELINAN

SUBJECT: TRAVEL DATA FOR SETTLEMENT VOUCHER FOR TRAVEL AUTHORIZATION NUMBER 0126TA008

THE FOLLOWING DATA ARE SUBMITTED FOR PREPARATION OF MY TRAVEL VOUCHER AND SETTLEMENT OF MY OFF-ISLAND TRAVEL ACCOUNT, TRIP IS "CANCELED".

1) NAME OF TRAVELER: SENATOR VICENTE C. PANGELINAN

2) ITINERARY: GUAM/HONOLULU/GUAM

3) DATE AND TIME TRAVELER DEPARTED GUAM: 14-May-01 6:10 AM

4) DATE AND TIME TRAVELER RETURNED TO GUAM:
07-Jun-01 5:05 PM

5) PER DIEM

AUTHORIZED

	DAYS	RATE	AMOUNT
A)	12	$227.50	$2,730.00
B)		$	$
C)		$	$
D)		$	$
TOTAL	12	$227.50	$2,730.00

CLAIMED

	DAYS	RATE	AMOUNT
A)	12	$227.50	$2,730.00
B)		$	$
C)		$	$
D)		$	$
TOTAL	12	$227.50	$2,730.00

6) MISCELLANEOUS ALLOWANCE:
SEE ATTACHMENT

PURPOSE:
A) GROUND TRANSPORTATION DOLLAR RENTAL AUTHORIZED CLAIMED

	SERVICES	$1,000.00	$733.90
B)	_____	$ -	$ -
C)	_____	$ -	$ -
** Attached	TOTAL MISC:	$1,000.00	Total: $733.90**

	AUTHORIZED	CLAIMED
AIRFARE COST	$	$
Type of Airlines Used:		
Continental Airlines	$	$
TICKET # 0057750659758		
& 0054078323104	$	$
TOTAL A/F:	$_____ Total:	$_____

7) Supplemental Travel Authorization, if any:
   A) Travel Authorization Number:
   B) Destination:
   C) Per Diem Authorized: $___ Claimed: $___
   D) Miscellaneous: Authorized: $___ Claimed: $___

8) Authorized Destination Reached: YES:xxxxxx NO:__

I CERTIFY THAT THE ABOVE DATA ARE TRUE AND CORRECT AND THAT THEY REPRESENT A TRUE AND CORRECT ACCOUNT OF MY RECENT TRAVEL ON OFFICIAL BUSINESS.

SENATOR VICENTE "ben" C. Pangelinan
TRAVELER'S SIGNATURE

Note: Submit receipts for miscellaneous expense and used plane ticket with this report Authorizing Senator must initial this form if traveler is a committee or Office Staff.

002402

MINA' BENTE SAIS NA LIHESLATURAN GUAHAN
TWENTY-FIFTH GUAM LEGISLATURE
[illegible]

VENDOR NO: _____

Transmittal Request Order No: 82vcp

V12167

A. Request For:

Purchase Order Date: _____ P.O. No.: _____ Acct No.: _____

Disencumber P.O. Date: _____ P.O. No.: _____ Acct No.: _____

In Favor of: _____

Articles(s)	Qty	Unit	Unit Price	Amount
1				
2				
3				
Total				$

If more space is required, list separately and attach to this form.

For Delivery to: _____

B. Request For Payment:

Purchase Order Date: _____ P.O./CON/CSA No.: _____ Acct No.: 6302.504

Direct Payment Date: 5/31/01 Voucher No.: _____ Acct No.: _____

Payable to: PHILLIPS & BORDALLO $ 10,000.00

DR: _____	$ _____		DR _____	_____	$	
DR: _____	$ _____		DR _____	_____	$	
DR: _____	$ _____		DR _____	_____	$	-
	TOTAL	$ _____			$	10,000.00

Note: Attach Original Invoices.

C. Request For:

Travel Authorization Date: _____ T/A No.: _____ Acct No.: _____

Name of Traveler: _____ Title: _____

Itinerary: Fr: _____ To: _____ Days: _____

Purpose of Travel: _____ $ _____

Mode of Travel: _____ Name of Travel Agency or Carrier: _____

Amount of Travel Advanced Requested: _____ Departure: _____ Return: _____

D. Request For Transfer: Date: _____ $ _____

From Account No.: _____ To Account No.: 536 _____

E. Request For Contract or to Disencumber Contract Date: _____ $ _____

Contractor: _____ Contract No.: _____

Note: Attach Fully Completed and Executed Contract

Accounting Information:

Allotment No. 6302.504 Authorized Amount: 10,000.00

Contract No: _____ Purchase Order No: _____ Direct Payment 10,000.00

1st Quarter _____ 2nd Quarter _____

3rd Quarter 10,000.00 4th Quarter _____

Requested By: _____
Supervisor

Section: _____

Certified Funds Available:

_____ _____
Johnny S. Sablan, CFO - Acting Date

FISCAL
RECEIVED
BY AV
MAY 31 2001

_____ 31-May-01
Authorized Signature Date

tre form revised 2/1401

112a

The Law Offices of
Phillips & Bordallo
A Professional Corporation

410 West O'Brien Drive, Hågatña, Guam 96910
Tel: (671) 477-ABCD (2223)
Fax: (671) 477-2FAX (2329)

May 22, 2001

INVOICE SUBMITTED TO:

Senator Vicente C. Pangelinan
Twenty-Sixth Guam Legislature
173 Aspinall Avenue
Ada's Plaza Center, Suite 108A
Hågatña, Guam 96910

FOR PROFESSIONAL SERVICES RENDERED AND COSTS FROM MAY 1, 2001 TO MAY 22, 2001	$10,000.00
AMOUNT DUE:	**$10,000.00**

I CERTIFY THAT THE ABOVE BILL IS TRUE AND CORRECT AND THAT PAYMENT HAS NOT BEEN RECEIVED.

PHILLIPS & BORDALLO, P.C.

By: /s/ Michael F. Phillips
MICHAEL F. PHILLIPS

"I Erensia, Lina'la', Espiritu-ta"

062556

LIHESLATURAN GUAHAN FY2001 — PHILLIPS & BORDALLO — CHECK DATE: Jun 4 01

Doc No: V12167

P&B 5/01	VCP-82 Jun 4 01	10,000.00	PROF SRVCS	0.00	202-506 10,000.00
TOTAL >		10,000.00		0.00	10,000.00

5-01

062556

LIHESLATURAN GUAHAN FY2001
Legislature Operations Fund
155 Hesler Street
Hagatna, Guam 96910

Jun 4 01

$10,000.00

PAY ********** Ten Thousand and 00/100 **********

TO THE ORDER OF
PHILLIPS & BORDALLO
410 WEST O'BRIEN DRIVE
AGANA, GUAM 96932

6/4/01

***** COPY *****

Guam Legislature Operations Fund

MINA' BENTE SAIS NA LIHESLATURAN GUAHAN
TWENTY-SIXTH GUAM LEGISLATURE

VENDOR NO: U12167

Transmittal Request Order No: 78vcp

002163

A. Request For:
Purchase Order Date: P.O. No.: Acct No.:
Disencumber P.O. Date: P.O. No.: Acct No.:
In Favor of:
Articles(s) Qty Unit Unit Price Amount
1
2
3
Total $
If more space is required, list separately and attach to this form

RUSH

For Delivery to:

B. Request For Payment:
Purchase Order Date: P.O./CON/GSA No.: Acct No.:
Direct Payment Date: 5/7/01 Voucher No.: Acct No.: 6302-315-506
Payable to: PHILLIPS & BORDALLO $ 10,000.00

#01-0828

DR: JAN 15- $ DR $
DR: APR 30 01 $ DR $ -
DR: $ DR $ -
TOTAL $ $ 10,000.00
Note: Attach Original Invoices

C. Request For:
Travel Authorization Date: T/A No.: Acct No.:
Name of Traveler: Title:
Itinerary: Fr: To: Days:
Purpose of Travel: $
Mode of Travel: Name of Travel Agency or Carrier:
Amount of Travel Advanced Requested: Departure: Return:

D. Request For Transfer: Date: $
From Account No.: To Account No.: 536

FISCAL
RECEIVED
BY
MAY 07 2001

E. Request For Contract or to Disencumber Contract Date: $
Contractor: Contract No.:
Note: Attach Fully Completed and Executed Contract

Accounting Information:
Allotment No. 6302-315-06 Authorized Amount: 10,000.00
Contract No: Purchase Order No: Direct Payment 10,000.00
1st Quarter 2nd Quarter
3rd Quarter 10,000.00 4th Quarter

Requested By: Supervisor
Section:

Certified Funds Available:
for Marivic C. Reyes
Johnny S. Sablan, CFO - Acting
5/7/01
Date

Authorized Signature
7-May-01
Date

tro form revised 2/14/01

115a

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The Law Offices of
Phillips & Bordallo
A Professional Corporation

410 West O'Brien Drive, Hågatña, Guam 96910
Tel: (671) 477-ABCD (2223)
Fax: (671) 477-2FAX (2329)

May 4, 2001

INVOICE SUBMITTED TO:

Senator Vicente C. Pangelinan, Senator
Twenty-Sixth Guam Legislature
173 Aspinall Avenue
Ada's Plaza Center, Suite 108A
Hågatña, Guam 96910

FOR PROFESSIONAL SERVICES RENDERED FROM JANUARY 15, 2001 TO APRIL 30, 2001	$10,000.00
AMOUNT DUE:	**$10,000.00**

I CERTIFY THAT THE ABOVE BILL IS TRUE AND CORRECT AND THAT PAYMENT HAS NOT BEEN RECEIVED.

PHILLIPS & BORDALLO, P.C.

By: /s/ Michael F. Phillips
MICHAEL F. PHILLIPS

"I Erensia, Lina'la', Espiritu-ta"

LIHESLATURAN GUAHAN FY2001

062289

PHILLIPS & BORDALLO

CHECK DATE: May 9 01

	VCP-78			302-506
001-0328	May 4 01	10,000.00	PROFESSIONAL SRVCS 0.00	10,000.00
	TOTAL >	10,000.00	0.00	10,000.00

5.9.01

LIHESLATURAN GUAHAN FY2001
Legislature Operations Fund
155 Hesler Street
Hagatna, Guam 96910

062289

May 9 01

$10,000.00

Ten Thousand and 00/100

TO THE ORDER OF
PHILLIPS & BORDALLO
410 WEST O'BRIEN DRIVE
AGANA, GUAM 96932

5/9/01

***** COPY *****

Guam Legislature Operations Fund

In Re Ninth Circuit Case No. 00-70447

To be attached to Judicial Council's Petition for Rehearing En Banc

AFFIDAVIT REGARDING ADMISSION DURING TELEPHONIC CONVERSATION WITH SENATOR PANGELINAN

I, Anthony Sanchez, Administrative Director for the Superior Court of Guam, do hereby attest under penalty of perjury as to the following:

1. In a telephonic conversation with Senator Pangelinan on January 28, 2002, Senator Pangelinan, Respondent in Ninth Circuit Case No. 00-70447, admitted to me in a conversation with him via that telephone, that he did indeed use public monies to pay for his attorney, Michael F. Phillips, in *Pangelinan v. Gutierrez*. I have reason to believe that these expenditures prove that he lacked taxpayer standing from the beginning of this case.

2. I request that this affidavit be attached to the Petition for Rehearing En Banc that was filed (or will be filed) by the Judicial Council in the above entitled matter.

Dated this 28th day of January, 2002.

By: /s/ Anthony Sanchez
Anthony Sanchez
Administrative Director,
Superior Court of Guam

MINA'BENTE SINGKO NA
LIHESLATURAN GUÅHAN
2000 (SECOND) Regular Session

Resolution No. 379 (COR)
As amended on the Floor.

Introduced by: M.G. Camacho
E.C. Bermudes
A.C. Blaz
J.M.S. Brown
E.B. Calvo
Mark Forbes
L.F. Kasperbauer
A.C. Lamorena, V
C.A. Leon Guerrero
K.S. Moylan
V.C. Pangelinan
J.C. Salas
S.A. Sanchez, II
A.R. Unpingco

Relative to authorizing legal action on the part of *I Mina'Bente Singko Na Liheslaturan Guåhan* on the matter of the composition of the Guam Election Commission and related matters.

BE IT RESOLVED BY *I LIHESLATURAN GUÅHAN:*

WHEREAS, *I Maga'lahen Guåhan* has unilaterally appointed Membership of the Guam Election Commission without recommendation of the established political parties, in contradiction of Guam law; and

WHEREAS, *I Mina'Bente Singko Na Liheslaturan Guåhan* considers this a threat to the fair administration of elections in Guam, harmful to the public interest, and a direct contravention of the intent of *I Liheslatura* in the enactment of election law; now therefore, be it

RESOLVED, by *I Mina'Bente Singko Na Liheslaturan Guåhan* that the Speaker of *I Mina'Bente Singko Na Liheslaturan Guåhan* is authorized, on behalf of the Body, to initiate or intervene in any legal action seeking judicial remedy in the matter of the appointment of Members of the Guam Election Commission, as well as any questions or issues arising from that legal action or this matter; and be it further

RESOLVED, by *I Mina'Bente Singko Na Liheslaturan Guåhan* that the Speaker of *I Mina'Bente Singko Na Liheslaturan Guåhan* is authorized to enter in such contracts and make such obligations as are necessary to fulfill the intent of this resolution; and be it further

RESOLVED, that the Speaker cerify, and the Legislative Secretary attests to, the adoption hereof and that copies of the same be thereafter transmitted to all Members of *I Mina'Bente Singko Na Liheslaturan Guåhan;* and to the Honorable Carl T.C. Gutierrez, *I Maga'lahen Guåhan.*

DULY AND REGULARLY ADOPTED ON THE 15TH DAY OF AUGUST, 2002.

/s/ Antonio R. Unpingco
ANTONIO R. UNPINGCO
Speaker

/s/ Joanne M.S. Brown
JOANNE M.S. BROWN
Senator and Legislative Secretary

MINA'BENTE SAIS NA
LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Resolution No. 127 (LS)
As amended on the Floor.

Introduced by: V.C. Pangelinan
T.C. Ada
F.B. Aguon, Jr.
M.C. Charfauros
L. Leon Guerrero
J.T. Won Pat
J.F. Ada
J.M.S. Brown
E.B. Calvo
F.P. Camacho
Mark Forbes
L.F. Kasperbauer
K.S. Moylan
A.R. Unpingco

Relative to authorizing the payment of legal fees and court costs for defending a Member of *I Liheslaturan Guåhan* in a lawsuit initiated against him in the Superior Court of Guam.

BE IT RESOLVED BY *I LIHESLATURAN GUÅHAN:*

WHEREAS, Senator Angel L.G. Santos, a Member of *I Liheslaturan Guåhan,* was sued whilst performing a legislative function of informing the public of possible corruption, arising from legislative oversight hearings conducted in 1997; and

WHEREAS, the lawsuit, identified as *Dennis A. Rodriguez v. Angel L.G. Santos,* Superior Court of Guam Civil Case Number CV1083-97, was initiated against Senator Santos for his public disclosures pertaining to possible government corruption; and

WHEREAS, the Standing Rules permits the use of legislative funds for defense of lawsuits initiated against their Members under § 23.12, and under the other powers afforded the Committee on Rules; and

WHEREAS, good cause exists to provide for the defense of Senator Santos so that Members of *I Liheslaturan Guåhan* will not be intimidated or financially ruined whilst attempting to inform the public about possible government corruption and discussing issues of public discourse; and

WHEREAS, this case will establish further important, legal precedent as to the scope of the Speech or Debate Clause, an immunity expressly afforded Members of *I Liheslaturan Guåhan* in the 1950 Organic Act of Guam to be free from liability before any other tribunal other than *I Liheslaturan Guåhan* itself for legislative activities; now therefore, be it

RESOLVED, that *I Mina'Bente Sais Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, authorize the payment of Senator Angel L.G. Santos' legal fees and costs in defense of Superior Court of Guam Civil Case Number CV1083-97, entitled *Rodriguez v. Santos;* and be it further

RESOLVED, that the Speaker certify, and the Legislative Secretary attests to, the adoption hereof and that copies of the same be thereafter transmitted to Senator Angel L.G. Santos; to the Executive Director of *I Liheslaturan Guåhan;* and to the Acting Comptroller of *I Liheslaturan Guåhan.*

DULY AND REGULARLY ADOPTED ON THE 12TH DAY OF SEPTEMBER, 2001.

/s/ Antonio R. Unpingco
ANTONIO R. UNPINGCO
Speaker

/s/ Joanne M.S. Brown
JOANNE M.S. BROWN
Senator and Legislative Secretary